

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 24

SOUTHERN RAILWAY COMPANY, PETITIONER,

VS.

EMIL PAINTER, ADMINISTRATRIX OF THE
ESTATE OF GEOFFREY L. PAINTER, DE
CEASED

PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 4, 1941.

CERTIORARI GRANTED MAY 26, 1941.

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 11,794

CIVIL.

SOUTHERN RAILWAY COMPANY, A CORPORATION,
APPELLANT,

VS.

ETHEL PAINTER, ADMINISTRATRIX OF THE
ESTATE OF GEOFFREY L. PAINTER,
DECEASED, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MISSOURI.

FILED JULY 29, 1940.

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the November Term, 1940, of said Court, before the Honorable Archibald K. Gardner, the Honorable Joseph W. Woodrough and the Honorable Harvey M. Johnsen, Circuit Judges.

Attest:

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the twenty-ninth day of July, A. D. 1940, a transcript of record pursuant to an appeal taken from the District Court of the United States for the Eastern District of Missouri, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the Southern Railway Company, a corporation, was Appellant and Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, was Appellee, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

[fol. 1] Notice of Appeal to the Circuit Court of Appeals
Under Rule 73 (B).

(Filed July 10, 1940.)

In the District Court of the United States for the Eastern
Division of the Eastern Judicial District of Mis-
souri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, Deceased, Plaintiff,
No. 300. vs. Court Room No. 3.
Southern Railway Company, a Corporation, Defendant.

Notice Is Hereby Given that Southern Railway Com-
pany, a corporation, defendant above named, hereby ap-
peals to the Circuit Court of Appeals for the Eighth Circuit
from the interlocutory judgment entered in this cause on
July 10th, A. D. 1940, granting, on motion of plaintiff above
named, a preliminary injunction, as set forth in said judg-
ment, against the defendant above named.

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,
E. C. HARTMAN,
506 Olive Street,
St. Louis, Missouri.

BRUCE A. CAMPBELL,
KRAMER, CAMPBELL,
COSTELLO & WIECHERT,
606-618 First National Bank Bldg.,
East St. Louis, Illinois.
Attorneys for Defendant.

Service of the above notice is hereby acknowledged this 10th day of July, 1940.

MARK D. EAGLETON and
ROBERTS P. ELAM,
By Roberts P. Elam,
Attorneys for Plaintiff.

[fol. 2] Complaint.

(Filed Aug. 31, 1939.)

In the District Court of the United States Within and for
the Eastern Division of the Eastern Judicial Dis-
trict of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, Deceased, Plaintiff,

306 vs. Court No. 3.

Southern Railway Company, a Corporation, Defendant.

Plaintiff, for her cause of action, states:

1. That jurisdiction is founded on the existence of a federal question arising under particular statutes. The action arises under the act of April 22, 1908, c. 149, 35 Stat. 65, as amended; 45 U.S.C.A., sec. 51-59, as hereinafter more fully appears.

2. That plaintiff is the duly appointed, qualified and acting Administratrix of the Estate of Geoffrey L. Painter, deceased, under and by virtue of her appointment by the Probate Court at Knox County, Tennessee, and as such administratrix, plaintiff institutes and prosecutes this suit on behalf of the surviving widow and dependent minor children (hereinafter specifically named) of Geoffrey L. Painter, deceased, pursuant to the laws of the United States of America in such case made and provided, and particularly those laws known as the Federal Employers' Liability Act (45 U.S.C.A., sections 51-59).

[fol. 3] 3. That at all times herein mentioned defendant was, and now is, a corporation duly organized and existing under and by virtue of law, and engaged in the business of operating a railroad system as a common carrier of goods, freight and passengers for hire between the various states of the United States of America, and that defendant owned,

operated, maintained and controlled railroad properties, lines, tracks, roadbeds, trains, engines and cars for such purposes.

4. That on or about the 3rd day of February, 1939, and for a long time prior thereto, Geoffrey L. Painter was a fireman in the employ of defendant, and was, on said date, engaged in the usual course of his employment as such fireman upon one of the defendant's railroad trains, then and there being operated by defendant (its agents, servants and employees other than said Geoffrey L. Painter) in interstate commerce between Bulls Gap, Tennessee and Ashville, North Carolina.

5. That on or about the said 3rd day of February, 1939, while defendant was operating said train as aforesaid, and while defendant and said Geoffrey L. Painter were engaged in interstate commerce and transportation, defendant (its agents, servants and employees other than said Geoffrey L. Painter) negligently caused, suffered and permitted said train to be derailed and wrecked at or near the town of Paint Pock, State of North Carolina, directly thereby causing said Geoffrey L. Painter to be crushed and mangled by the parts of the locomotive and cars of the said train [fol. 4] and to sustain fatal injuries whereof he then and there died.

6. That plaintiff does not know, and has no means of knowing the cause of the aforesaid derailment and wrecking of said train; that said train, the parts thereof, the tracks, roadbed and appliances thereof (over which the said train was being operated) were within the exclusive custody and control of defendant (its agents, servants and employees other than the said Geoffrey L. Painter).

7. Plaintiff further states that at the time of the death of said Geoffrey L. Painter, as aforesaid, he left surviving him his widow, Ethel Painter, and four minor dependent children, to-wit: John Painter, then of the age of fifteen years; James Painter, then of the age of nine years; Janet Painter, then of the age of nine years; and Elizabeth Painter, then of the age of six years; that, prior to his death, said Geoffrey L. Painter was a strong, able-bodied, industrious man in good health, capable of earning and actually earning approximately One Hundred Ninety Dollars

(\$190.00) per month, and with good prospects of advancement.

8. That, as a direct and proximate result of the death of said Geoffrey L. Painter, his surviving widow has been deprived of the pecuniary benefits, support, maintenance and assistance, and his minor children have been deprived of the teaching, education, maintenance, support, assistance and training, which the said Geoffrey L. Painter would otherwise have rendered unto them; all to their injury and [fol. 5] damage, and to the injury and damage of plaintiff as their representative herein, in the sum of Seventy Thousand Dollars (\$70,000.00).

9. Wherefore, plaintiff prays judgment in the sum of Seventy Thousand Dollars (\$70,000.00), together with her costs herein.

MARK D. EAGLETON,
1020 Telephone Bldg., St. Louis, Mo.,
Attorney for Plaintiff.

Plaintiff demands a trial by jury in this cause.

MARK D. EAGLETON,
Attorney for Plaintiff.

[fol. 6]

Summons.

District Court of the United States for the Eastern
District of Missouri, Eastern Division.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, deceased, Plaintiff,

Civil Action File No. 300. vs.

Southern Railway Company, a Corporation, Defendant.

To the above named Defendant:

You are hereby summoned and required to serve upon Mark D. Eagleton, Esq., plaintiff's attorney, whose address is 1020 Telephone Bldg., St. Louis, Mo., an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive

of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAS. J. O'CONNOR,
Clerk of Court,
By Ruby Barham,
Deputy Clerk.

(Seal of Court)

Date: August 31, 1939.

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 7] Return on Service of Writ.

I hereby certify and return, that on the 1st day of September, 1939, I received the within summons and executed the same by serving it on the within-named Southern Railway Company, a corporation, by delivering a true and correct copy of Summons and petition as furnished by the Clerk of the Court to B. F. Harris, Superintendent of Terminals of the within-named Southern Railway Company, no higher officers being present at time of service, on the 5th day of September, 1939, at St. Louis, Missouri.

WILLIAM B. FAHY,
United States Marshal.
By L. S. Davison,
Deputy United States Marshal.

721 Olive St.

Marshal's Fees

Travel	\$.06	
Service	4.00	1 mile
	<hr/> 4.06	

Received U. S. Marshal's Office Sep. 1, 1939, St. Louis, Mo.

(Endorsed): Filed in U. S. District Court on September 8, 1939.

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

[fol. 8]

Answer.

(Filed Sept. 25, 1939.)

In the District Court of the United States Within and for
the Eastern Division of the Eastern Judicial Dis-
trict of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, Deceased, Plaintiff,

No. 300. vs. Court No. 3.

Southern Railway Company, a corporation, Defendant.

Comes now the defendant in the above-entitled cause and
for its answer to plaintiff's complaint, admits:

1. That the defendant at all times mentioned in
plaintiff's complaint was, and now is, a corporation en-
gaged in the business of operating a railroad system as a
common carrier of goods, freight and passengers for hire
between the various states of the United States, and that
defendant owned, operated, maintained and controlled
railroad properties, lines, tracks, and other equipment for
such purposes.

2. That on or about February 3, 1939, and for some time
prior thereto, Geoffrey L. Painter was a fireman in the
employ of the defendant, and was on said date engaged
in the usual course of his employment as such fireman upon
one of the defendant's railroad trains, then and there being
operated by defendant in interstate commerce between Bulls
Gap, Tennessee and Ashville, North Carolina.

3. That on or about February 3, 1939, said train became
[fol. 9] derailed, and said Geoffrey L. Painter's death was
directly caused thereby.

4. Further answering, defendant states that it is with-
out knowledge or information sufficient to form a belief as
to the truth of the allegations contained in paragraphs 2,
7, and 8, of plaintiff's complaint, to the effect that plaintiff
is the duly appointed administratrix of the estate of Geof-
frey L. Painter, deceased, under and by virtue of an alleged
appointment of the Probate Court of Knox County, Ten-
nessee, and to the effect that said Geoffrey L. Painter left
surviving him his widow, Ethel Painter, and four minor
dependent children.

5. Further answering, defendant denies each and every other allegation in said complaint contained.

Wherefore, having fully answered, defendant prays to be hence dismissed with its costs.

KRAMER, CAMPBELL, COSTELLO &
WEICHERT,
FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,
E. C. HARTMAN,

Attorneys for Defendant.

[fol. 10] Amended Complaint.

(Filed Mar. 8, 1940.)

In the District Court of the United States Within and for
the Eastern Division of the Eastern Judicial Dis-
trict of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, Deceased, Plaintiff,

No. 300. vs. Court No. 3.

Southern Railway Company, a corporation, Defendant.

Plaintiff, for her cause of action, states:

1. That jurisdiction is founded on the existence of a federal question arising under particular statutes. The action arises under the Act of April 22, 1908, c. 149, 35 Stat. 65, as amended; 45 U. S. C. A., sec. 51-59, as hereinafter more fully appears.

2. That plaintiff is the duly appointed, qualified and acting Administratrix of the Estate of Geoffrey L. Painter, deceased, under and by virtue of her appointment by the Probate Court at Knox County, Tennessee, and as such administratrix, plaintiff institutes and prosecutes this suit on behalf of the surviving widow and dependent minor children (hereinafter specifically named) of Geoffrey L. Painter, deceased, pursuant to the laws of the United States of America in such case made and provided, and particularly those laws known as the Federal Employers' Liability Act (45 U. S. C. A., sections 51-59).

[fol. 11] 3. That at all times herein mentioned defendant was, and now is, a corporation duly organized and existing under and by virtue of law, and engaged in the business of operating a railroad system as a common carrier of goods, freight and passengers for hire between the various states of the United States of America, and that defendant owned, operated, maintained and controlled railroad properties, lines, tracks, roadbeds, trains, engines and cars for such purposes.

4. That on or about the 3rd day of February, 1939, and for a long time prior thereto, Geoffrey L. Painter was a fireman in the employ of defendant, and was, on said date, engaged in the usual course of his employment as such fireman upon one of the defendant's railroad trains, then and there being operated by defendant (its agents, servants and employees other than said Geoffrey L. Painter) in interstate commerce between Bulls Gap, Tennessee and Ashville, North Carolina.

5. That on or about the said 3rd day of February, 1939, while defendant was operating said train as aforesaid, and while defendant and said Geoffrey L. Painter were engaged in interstate commerce and transportation, defendant (its agents, servants and employees other than the said Geoffrey L. Painter) negligently caused, suffered and permitted said train to be derailed and wrecked at or near the town of Paint Rock, State of North Carolina, directly thereby causing said Geoffrey L. Painter to be crushed and mangled by the parts of the locomotive and cars of the said train and to sustain crushing injuries which caused the said Geoffrey L. Painter to suffer severe conscious pain and suffering of body and anguish of mind until he died on the date and at [fol. 12] the place aforesaid, approximately one hour after sustaining said injuries.

6. That plaintiff does not know the cause of the aforesaid derailment and wrecking of said train; that said train, the parts thereof, and tracks, roadbed and appliances thereof (over which the said train was being operated were within the exclusive custody and control of defendant (its agents, servants and employees other than the said Geoffrey L. Painter).

7. Plaintiff further states that at the time of the death of the said Geoffrey L. Painter, as aforesaid, he left surviving him his widow, Ethel Painter, and four minor dependent children, to-wit: John Painter, then of the age of fifteen years; James Painter, then of the age of nine years; Janet Painter, then of the age of nine years; and Elizabeth Painter, then of the age of six years; that, prior to his death, said Geoffrey L. Painter was a strong, able-bodied, industrious man in good health, capable of earning and actually earning approximately One Hundred Ninety Dollars (\$190.00) per month, and with good prospects of advancement.

8. That, as a direct and proximate result of the conscious pain and suffering of body and anguish of mind endured by the said Geoffrey L. Painter, he was damaged and his cause of action for said damages survives and is vested in the plaintiff herein; that, as a direct and proximate result of the death of said Geoffrey L. Painter, his surviving widow has been deprived of the pecuniary benefits, support, maintenance and assistance, and his minor children have been deprived of the teaching, education, maintenance, support, assistance, advice and training which the said Geoffrey L. Painter would otherwise have rendered unto them; all to [fol. 13] the injury and damage of said Geoffrey L. Painter, his surviving widow and his surviving minor children, and to the injury and damage of plaintiff as his personal representative herein, in the sum of Seventy Thousand Dollars (\$70,000.00).

9. Wherefore, plaintiff prays judgment in the sum of Seventy Thousand Dollars (\$70,000.00), together with her costs herein.

MARK D. EAGLETON,
Attorney for Plaintiff.

[fol. 14] Defendant's Motion to Make Definite and Certain.

(Filed Mar. 18, 1940.)

Comes now defendant and moves the Court to order that the following portion of plaintiff's amended petition found in lines 22 through 25, on Page 2, namely:

* * * defendant (its agents, servants and employees other than the said Geoffrey L. Painter) negligently caused, suffered and permitted said train to be derailed and wrecked
* * * *

be made definite and certain by requiring plaintiff to set out specifically the alleged negligence of defendant, for the reason that said allegation as it now stands is so indefinite and uncertain that the precise nature of the charge is not apparent; that defendant is unable to prepare its responsive pleading, or to prepare for trial; and the situation, facts, and circumstances are such that plaintiff is not entitled to the benefit of the doctrine of *res ipsa loquitur*.

KRAMER, CAMPBELL, COSTELLO &
WIECHERT,
FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,
E. C. HARTMAN.

Copy of within motion mailed to plaintiff's attorney this 18th day of March, 1930.

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN.

[fol. 15] Answer to Plaintiff's First Amended Complaint.

(Filed April 12, 1940.)

Comes now the defendant in the above entitled cause and for its answer to plaintiff's first amended complaint, admits:

1. That the defendant at all times mentioned in plaintiff's first amended complaint was, and now is, a corporation engaged in the business of operating a railroad system as a common carrier of goods, freight and passengers for hire between the various states of the United States, and that defendant owned, operated, maintained and controlled railroad properties, lines, tracks, and other equipment for such purposes.

2. That on or about February 3, 1939, and for some time prior thereto, Geoffrey L. Painter was a fireman in the employ of the defendant, and was on said date engaged

in the usual course of his employment as such fireman upon one of the defendant's railroad trains, then and there being operated by defendant in interstate commerce between Bulls Gap, Tennessee and Ashville, North Carolina.

3. That on or about February 3, 1939, said train became [fol. 16] derailed, and said Geoffrey L. Painter's death was directly caused thereby.

4. Further answering, defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2, 7, and 8, of plaintiff's first amended complaint, to the effect that plaintiff is the duly appointed administratrix of the estate of Geoffrey L. Painter, deceased, under and by virtue of an alleged appointment of the Probate Court of Knox County, Tennessee, and to the effect that said Geoffrey L. Painter left surviving him his widow, Ethel Painter, and four minor dependent children.

5. Further answering defendant states that the death of said Geoffrey L. Painter was caused by his own negligence directly contributing thereto in that he failed to exercise ordinary care for his own safety under the circumstances.

6. Further answering, defendant states that the risk of said derailment referred to in plaintiff's amended complaint and the effects thereof were assumed by said Geoffrey L. Painter.

7. Further answering, defendant denies each and every other allegation in said amended complaint contained.

Wherefore, having fully answered, defendant prays to be hence dismissed with its costs.

KRAMER, CAMPBELL, COSTELLO
& WEICHERT,

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,

E. C. HARTMAN,

Attorneys for Defendant.

Copy mailed to plaintiff's attorney this 12th day of April, 1940.

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,

Attorneys for Defendant.

[fol. 17] (Notice to Defendant of Presentment to Court of Supplemental Complaint for Relief to Preserve Jurisdiction of Court and Service.)

(Received and Filed June 21, 1940.)

In The District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

To the above-named defendant, Southern Railway Company, a corporation, or Fordyce, White, Mayne, Williams and Hartman, E. C. Hartman and Kramer, Campbell, Costello and Weichert, its attorneys of record in the above entitled cause:

Please Take Notice that on the 7th day of June, 1940, at 10:00 o'clock a. m., or as soon thereafter as counsel may be heard, the above named plaintiff will file in and present to the District Court of the United States for the Eastern Division of the Eastern ~~Judicial~~ District of Missouri, in Court Room No. 3 thereof, at the United States Courthouse and Customhouse, in the City of St. Louis, State of Missouri, her Supplemental Complaint For Relief To Preserve The Jurisdiction of said District Court of the United States, a copy of which said Supplemental Complaint is hereto attached; that plaintiff, at said time and place, will move said District Court of the United States for an order directing that you, the said defendant, and all persons acting by, under and through you, refrain from in any way doing any matter or thing tending to interfere with the jurisdiction of said District Court of the United States, or with the prosecution by this plaintiff in said District Court of the United States of her cause of action against you, the defendant, for injuries sustained by the above-named deceased, Geoffrey L. Painter, and his subsequent death, as set forth in the original complaint and first amended complaint filed in the above entitled cause in said District Court of the United States; that plaintiff, at said time and place, will further move said District Court of the

United States for an order enjoining and directing you to dismiss and set at naught that certain proceeding and action pending in the Chancery Court of Knox County, State of Tennessee, wherein you, the said Southern Railway Company, are complainant, and this plaintiff, Ethel Painter, as Administratrix of the Estate of Geoffrey L. Painter, Deceased, and individually in her own right, is defendant, in and by which said action it is sought to enjoin and restrain this plaintiff, Ethel Painter, as administratrix aforesaid and individually in her own right, as defendant named therein, from prosecuting and maintaining the cause of action for the death of said Geoffrey L. Painter, deceased, alleged in the original complaint and the first amended complaint filed in said District Court of the United States in the above entitled cause; and that said motions will be based on all the files, pleadings and proceedings herein, on the verified supplemental complaint hereto attached, and on the papers, documents and proceedings referred to therein.

Dated at St. Louis, Missouri, this 6th day of June, 1940.
(Seal)

MARK D. EAGLETON,
Attorney for Plaintiff,
1004 Telephone Building,
St. Louis, Missouri.

Receipt of a copy of the above and foregoing Notice, together with a copy of the Supplemental Complaint therein referred to thereto attached, is hereby acknowledged this 6th day of June, 1940 at 3:50 P. M.

FORDYCE, WHITE, MAYNE,
E. C. HARTMAN,

WILLIAMS & HARTMAN,
By E. C. Carpentier,

Attorneys for Defendant, Southern Railway Company, a Corporation.

KRAMER, CAMPBELL, COSTELLO
& WIECHERT.

[fol. 19]

Affidavit of Service.

State of Missouri,

City of St. Louis—ss.:

John C. Casey, of lawful age, being duly sworn, upon his oath states that he served the within Notice, and a copy of the Supplemental Petition therein referred to thereto attached (including copies of the Exhibits to said petition) upon the within named attorneys, Kramer, Campbell, Costello & Weichert, in the City of East St. Louis, County of St. Clair, State of Illinois, on the 6th day of June, 1940, by leaving a true copy of said Notice, Supplemental Petition, and Exhibits at the office of said attorneys Kramer, Campbell, Costello & Weichert located in the First National Bank Building in said city, county and state, with Dolores Neil, she being the clerk of said attorneys in charge of their said office at said time.

JOHN C. CASEY.

Subscribed and sworn to before me this 6th day of June,
1940.

My Commission expires: June 30, 1943.

(Notarial Seal)

OLIVER F. ERBS.

Notary Public.

[fol. 20] Supplemental Complaint for Relief to Preserve
the Jurisdiction of This Court Over This Cause.

(Received and Filed June 21, 1940.)

In The District Court of the United States for the Eastern
Division of the Eastern Judicial District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, Deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

Comes now the plaintiff in the above entitled cause and
files this, her supplemental complaint, and for cause of ac-
tion thereunder states:

I.

That on or about the 3rd day of February, 1939, the
above named decedent, Geoffrey L. Painter, a citizen and

resident of the County of Knox, State of Tennessee, while employed by defendant as a railroad locomotive fireman, met with severe injuries at or near the town of Paint Rock, County of Madison, State of North Carolina, which resulted in his death there on said day; that, thereafter, this plaintiff was duly appointed by the Probate Court of Knox County, State of Tennessee, as Administratrix of the Estate of said Geoffrey L. Painter, deceased, and brought this action in this Court to recover damages for and in behalf of the surviving widow, minor dependent children, and the estate of said Geoffrey L. Painter, for his said injury and death, as will more fully appear from the original complaint and first amended complaint filed in this cause, which are on file in the office of the Clerk of the United States [fol. 21] District Court, Eastern District of Missouri, and which are hereby specifically referred to for a more particular statement as to the grounds for said cause or action.

II.

That, after the filing of the original complaint herein, summons was duly issued and served upon defendant, Southern Railway Company herein, and said defendant filed its answer to said original complaint; that, thereafter, by leave of Court first had and obtained, plaintiff duly filed her first amended complaint herein, defendant filed its answer to said first amended complaint, and such proceedings were had that said cause was placed on the calender of causes for trial, and set for trial on May 20, 1940, but was by the Court, of the Court's own motion, continued from said setting and reset for trial on July 8, 1940.

III.

That in the plaintiff's original complaint, and in plaintiff's first amended complaint, filed in this cause it was specifically alleged, and in the answers to said complaints filed by defendant herein it was specifically admitted, that, at the time said decedent, Geoffrey L. Painter, met with his said injuries so resulting in his death, defendant was a common carrier by railroad engaged in interstate commerce, and decedent was engaged in interstate commerce in the scope and course of his employment by defendant.

IV.

That, by plaintiff's original complaint filed herein on August 31, 1939, and by plaintiff's first amended complaint filed herein on March 8, 1949, it was, and is, alleged:

"1. That jurisdiction is founded on the existence of a federal question arising under particular statutes. The action arises under the Act of April 22, 1908, c. 149, 35 Stat. 65, as amended; 45 U. S. C. A., sec. 51-59, as hereinafter more fully appears."

[fol. 22]

V.

That, by the answer to plaintiff's original complaint filed by the defendant herein, and by the answer to plaintiff's first amended complaint filed by the defendant herein, the aforesaid allegation was admitted, because not denied.

VI.

That this plaintiff, Ethel Painter, as an individual and in her own right, is and was a citizen and resident of the City of Knoxville, Knox County, State of Tennessee, and is a proper and necessary witness in said cause or action alleged in the original complaint and the first amended complaint filed in this cause in this Court, and whose testimony is and will be material and pertinent to the issues in said cause.

VII.

That the defendant, Southern Railway Company, a corporation, now is, and at all times herein mentioned was, a railway corporation organized and existing under the laws of the State of Virginia, a citizen and resident of the State of Virginia, with its principal office in the City of Richmond, State of Virginia, and maintaining and operating railway lines in and through the states of Virginia, North Carolina, Tennessee, Illinois, and possibly other of the several states of the United States, doing business as an interstate common carrier by railroad in said states and in the City of St. Louis, State of Missouri, in the Eastern Division of the Eastern Judicial District of Missouri, and operating its railroad trains in and through said states and into and out of said City of St. Louis, State of Missouri.

VIII.

That, neither prior to nor since the filing of this action in this District Court of the United States, no other person, firm or corporation has brought any action, other than this one, in any State or Federal court to adjudicate the right of [fol. 23] the estate, surviving widow and surviving minor children of said Geoffrey L. Painter, or either or any of them, to recover, or the liability of defendant for, damages for said injury to and death of said decedent, Geoffrey L. Painter; and that, by reason of the facts aforesaid and under the provisions of the Act of April 22, 1908, c. 149, 35 Stat. 65, as amended (45 U. S. C. A. §§ 51-59) and particularly section 6 thereof (45 U. S. C. A. § 56), this Court had, and has, specific, complete, sole and exclusive jurisdiction of and over the cause of action herein alleged in plaintiff's original complaint and first amended complaint heretofore filed in this Court in this cause, and the parties thereto.

IX.

That, notwithstanding the facts aforesaid, on or about the 27th day of May, 1940, the defendant, Southern Railway Company, as complainant, instituted an action in the Chancery Court of Knox County, State of Tennessee, by filing its bill of complaint in equity, under the practice prevailing in said State of Tennessee, in an action wherein said Southern Railway Company, a corporation, was named as complainant, and this plaintiff, Ethel Painter, as administratrix of the Estate of Geoffrey L. Painter, deceased, and also in her own right as an individual, was named as defendant; that in and by said bill of complaint in equity so filed in said Chancery Court of Knox County, Tennessee, said Southern Railway Company prayed that the defendant named in said bill of complaint (being this plaintiff here) be restrained and enjoined from in any way prosecuting and maintaining her action or suit pending in this District Court of the United States in this cause, and from instituting or prosecuting a similar suit against said Southern Railway Company in any jurisdiction other than the State courts for Knox County, State of Tennessee, or for Madison County, State of North Carolina, or in the United

[fol. 24] States District for the Northern Division of the Eastern District of Tennessee at Knoxville, or for the Western District of North Carolina at Asheville, for the recovery of damages alleged to be due from said Southern Railway Company for the death of her intestate Geoffrey L. Painter.

X.

That, after the filing of said bill of complaint in said Chancery Court of Knox County, State of Tennessee, under the practice existing in that state, the Chancellor of said Chancery Court, on said 27th day of May, 1940, issued his fiat to the Clerk and Master of said Knox County, directing the issuance of a writ of injunction as prayed in said bill of complaint; that thereupon on said day, under the practice existing in said State of Tennessee, the said Clerk and Master of said Knox County, State of Tennessee, issued a writ of injunction as directed by said Chancellor; and that, thereafter on said 27th day of May, 1940, under the practice existing in said State of Tennessee, a subpoena to answer, corresponding to a writ of summons as generally known, and a copy of said bill of complaint attached thereto, were served upon the defendant named therein (being this plaintiff here), and there was then also served upon the defendant named therein (being this plaintiff here), a copy of said writ of injunction wherein and whereby this plaintiff was enjoined and restrained, and ordered to desist and refrain, from prosecuting and maintaining her aforesaid action theretofore, then and now pending in this District Court of the United States against the complainant named in said bill of complaint (being the Southern Railway Company, defendant in this cause in this Court), and enjoining the defendant named in said bill of complaint (being this plaintiff here) from instituting and prosecuting any similar suit against the complainant named in said bill of complaint (defendant Southern Railway Company here) in any jurisdiction [fol. 25] other than the State courts for Knox County, State of Tennessee, or for Madison County, State of North Carolina, or in the United States District Courts for the Northern Division of the Eastern District of Tennessee at Knoxville, or for the Western District of North Carolina at Asheville, for the recovery of damages al-

leged to be due for the death of her intestate, Geoffrey L. Painter.

XI.

That a copy of said bill of complaint in equity filed in said Chancery Court of Knox County, State of Tennessee, together with copies of said fiat, said writ of injunction and said subpoena to answer, as the same were attached together and served upon this plaintiff as aforesaid, are hereto attached, marked Exhibit "A", and by reference made a part hereof.

XII.

That, thereafter, said bill of complaint filed in said Chancery Court of Knox County, State of Tennessee, was amended by the complainant named therein (defendant Southern Railway Company here), and a copy of such amendment is hereto attached, marked Exhibit "B", and by reference made a part hereof.

XIII.

That the basis of the claim and complaint and equity of said Southern Railway Company in said action so brought in the Chancery Court of Knox County, State of Tennessee, as amended, is, in substance:

(a) That this plaintiff, Ethel Painter, had available to her, in which she could have prosecuted her action for injury to and death of her intestate, Geoffrey L. Painter, both State and Federal courts in the county in which she resides, and in which her deceased husband, Geoffrey L. Painter, resided prior to his death, and in the District in which said Geoffrey L. Painter's injury and death occurred:

[fol. 26] (b) That this District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in which this plaintiff has chosen to bring and maintain her said action for damages for and injury to and death of said Geoffrey L. Painter, sits at the City of St. Louis, State of Missouri, some 500 to 600 miles from the residence of the plaintiff, Ethel Painter, and farther from the county and District in which said Painter's injury and death occurred; and that said Southern Railway Company operates no lines, does only an

interstate business, and maintains no regularly employed attorneys, in said City of St. Louis, State of Missouri;

(c) That the witnesses necessary to the defense of this plaintiff's said action in this District Court of the United States reside in and near Knoxville, Tennessee, and in and about the County of Madison, North Carolina, and that the defense of plaintiff's said action by said Southern Railway Company will require said Southern Railway Company to take its witnesses from their various places of residence to the City of St. Louis, State of Missouri, and to specially employ counsel for such defense, and will, therefore, compel said Southern Railway Company to incur greater expense than if the trial of such an action was had in the county where plaintiff resides, or where the injury to and death of plaintiff's decedent, Geoffrey L. Painter, occurred;

(d) That this plaintiff, Ethel Painter, has confederated with certain attorneys and solicitors for attorneys, who maintain organizations in and about the said city of St. Louis, and possibly other cities, for the purpose of inducing persons having claims against the Southern Railway Company, and other railways of the country, to bring their suits within the City of St. Louis, Missouri;

(e) That the purpose of plaintiff, Ethel Painter, in bringing her action for damages for the injury to and [Feb. 27] death of said Geoffrey L. Painter in this District Court of the United States, "could have been but one", namely, to impose upon said Southern Railway Company a costly and oppressive defense, and to obtain improper and oppressive advantages, and avoid the laws of the State of Tennessee and the laws of North Carolina, and to compel said Southern Railway Company to submit to unreasonable and unjust demands of this plaintiff, by harassing and annoying said Southern Railway Company, and inflicting upon it unreasonable and unnecessary expense; and

(f) That the defense by Southern Railway Company of this action filed by plaintiff in this District Court of the United States, as aforesaid, will greatly burden Southern Railway Company in its work of moving interstate commerce by reason of its being required to take its witnesses

from in and near Knoxville, Tennessee, to the City of St. Louis, State of Missouri, and to require said Southern Railway Company to bear the expense thereof is to deprive it of its rights under the due process clause of the 14th Amendment to the Constitution of the United States.

XIV.

That this District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri now has, and has had since the filing of this action on August 31, 1939, full jurisdiction of this plaintiff's action herein to recover from defendant Southern Railway Company damages for the injury to and death of said Geoffrey L. Painter, and of the parties thereto, under and by virtue of the laws of the United States of America in such cases made and provided.

XV.

That this plaintiff has the absolute right, under the Constitution and laws of the United States in such cases made and provided, to institute and prosecute, in this District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, her said action herein to recover from defendant Southern Railway Company damages for the injury to and death of said Geoffrey L. Painter.

XVI.

That this plaintiff has confederated with no attorney, solicitor for any attorney, or any other person, firm, corporation or organization, for any purpose of inducing any person having any claim against defendant, or any other railroad company, to bring any suit in the City of St. Louis, Missouri, or elsewhere, but has, as a matter of her own free and personal volition, selected and employed counsel of her own choosing to institute and prosecute her said action for injury to and death of her said decedent, against defendant Southern Railway Company, in this District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

XVII.

That the purpose of this plaintiff in bringing her said action for damages for the injury to and death of said

Geoffrey L. Painter in this District Court of the United States is a matter of no concern whatsoever to defendant, but said action was brought in this Court solely and only for the purpose of facilitating the due and proper handling of said cause by her said attorney employed by her for that purpose, to the best advantage of this plaintiff and her said attorney; that plaintiff's so instituting and maintaining her said action in this District Court of the United States does not impose upon defendant Southern Railway Company any more costly and oppressive defense, and does not impose any burden upon its work of moving interstate commerce, other than is required of it under and by the laws of the United States of America in such cases made and provided; that plaintiff's so instituting and maintaining her said action in this District Court of the United States can in no manner permit plaintiff to obtain improper or oppressive advantages, or avoid the laws of the State of Tennessee, or the laws of the State of North Carolina, because said action is governed and controlled solely by the laws of the United States of America and the decisions of the Federal courts thereunder, and is in nowise governed by the law of any of the several states of the United States.

XVIII.

That this plaintiff herein is desirous of trying her cause of action for damages for said injury to and death of said Geoffrey L. Painter in this District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri; that the object of defendant herein, Southern Railway Company, to have said Chancery Court of Knox County, State of Tennessee, enjoin and restrain plaintiff from proceeding with and prosecuting her cause of action herein, and the writ of injunction issued by said Chancery Court of Knox County, State of Tennessee, as aforesaid, separately and together,

(a) Amount to an unwarranted interference and intermeddling with the jurisdiction of this Court;

(b) Arrest, impair, frustrate, destroy and defeat the proper jurisdiction of this Court;

(c) Impair, destroy, frustrate and defeat the due and proper administration of justice;

(d) Unlawfully and inequitably prevent and restrain material witnesses from testifying to matters within their knowledge, either in this Court or by deposition, in a cause pending in this Court, and of which this Court has full jurisdiction;

(e) Deprive plaintiff of an absolute right granted her by the Constitution and laws of the United States of America;

(f) Set aside and at naught the laws of the United States of America, and the provisions of the Federal Employers' Liability Act;

(g) Work an inequitable and unconscionable wrong upon the plaintiff in her said action in this District Court [fol. 30] of the United States to recover damages for the injury to and death of said Geoffrey L. Painter; and

(h) Unlawfully and inequitably interfere with the rights of this plaintiff under the Constitution and laws of the United States of America.

XIX.

That under said writ of injunction issued by said Chancery Court of Knox County, State of Tennessee, this plaintiff is restrained and enjoined from prosecuting and maintaining her action herein, in this District Court of the United States, to recover damages for the said injury to and death of said Geoffrey L. Painter; that said writ of injunction and the fiat upon which said writ of injunction were issued were, and are, made without authority of law, constitute a violation of plaintiff's rights under the Constitution and laws of the United States of America, deprive plaintiff of rights and privileges given her by the Constitution and laws of the United States of America without due process of law, and are null, void, and of no force or effect; that plaintiff is desirous of having her said cause to recover damages for the said injury to and death of said Geoffrey L. Painter tried in this Court at its next setting for trial, to-wit: on July 8, 1940; that, in order to so try said cause, plaintiff must prosecute and maintain said action, and aid and abet in its prosecution and maintenance by testifying therein, and that she cannot do so without violating said writ of injunction of said Chancery

Court of Knox County, State of Tennessee, which said writ of injunction, although wholly invalid as aforesaid, is, upon its face, valid and effective and in full force; and that this plaintiff cannot prosecute and maintain her said action for damages in this District Court of the United States, which has full, complete and exclusive jurisdiction thereof as aforesaid, without the risk of punitive action by [fol. 31] said Chancery Court of Knox County, State of Tennessee.

XX.

That this Court has jurisdiction of this proceeding by supplemental complaint, for the reason that this proceeding is ancillary to the original action brought by this plaintiff against this defendant under the laws of the United States of America in such cases made and provided in this District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri to recover damages for the injury to and death of said Geoffrey L. Painter, more specifically alleged in plaintiff's original complaint and first amended complaint herein filed as aforesaid, and is based upon and ancillary to said action for the purpose of protecting the jurisdiction of this District Court of the United States first acquired over said cause or action, and over the subject matter of, and the parties to, said action.

XXI.

That this plaintiff has no adequate remedy at law in the premises; that, if the relief prayed for in this supplemental complaint be not granted, plaintiff will suffer irreparable damage and unconscionable and inequitable wrong; and that unless said proceedings so pending in the Chancery Court of Knox County, State of Tennessee, be dismissed, this Court cannot properly exercise its jurisdiction, vested in it by the Constitution and laws of the United States of America, which has been acquired, and now exists, in said action pending herein wherein plaintiff seeks to recover damages as aforesaid.

Wherefore, plaintiff prays for an order of this Court permanently and forever enjoining the defendant Southern Railway Company, its agents and servants, and any and all persons acting by, under or through it, from in any way

[fol. 32] doing any matter or thing tending to interfere with the jurisdiction of this District Court of the United States, or with the prosecution and maintenance by this plaintiff in this District Court of the United States of her cause of action against said Southern Railway Company, a corporation, for the injury to and death of decedent, Geoffrey L. Painter, on or about the 3rd day of February, 1939, as aforesaid, alleged in plaintiff's original complaint and first amended complaint herein filed.

Plaintiff further prays and asks judgment that the defendant Southern Railway Company be enjoined and directed to dismiss and set at naught that certain proceeding and cause of action pending in the Chancery Court of Knox County, State of Tennessee, wherein said Southern Railway Company is complainant, and this plaintiff, Ethel Painter, as Administratrix of the Estate of Geoffrey L. Painter, deceased, and individually in her own right, is defendant, and in and by which action it is sought to enjoin and restrain this plaintiff from prosecuting and maintaining in this District Court of the United States her said cause of action for the injury to and death of Geoffrey L. Painter, deceased, alleged in plaintiff's original complaint and first amended complaint herein filed, and for such other and further relief as to the Court may seem just and equitable in the premises.

MARK D. EAGLETON,
Attorney for Plaintiff,
1004 Telephone Bldg.,
St. Louis, Missouri.

State of Missouri,

City of St. Louis—ss.:

Mark D. Eagleton being first duly sworn, deposes and says that he is agent and attorney for the plaintiff in the above entitled cause, and, as such, has authority to make this affidavit in her behalf; that he has read and fully knows [fol. 33] the contents of the above and foregoing supplemental complaint; and that the matters and facts therein alleged are true to the best of his knowledge, information and belief.

MARK D. EAGLETON,

Subscribed and sworn to before me this 6th day of June,
1940.

(Notarial Seal)

P. R. BARRETT,
Notary Public.

My Commission expires: Sept. 4, 1943.

[fol. 34]

Exhibit "A".

(Bill of Complaint.)

To the Honorable A. E. Mitchell, Chancellor, Holding the
Chancery Court for Knox County, at Knoxville, Ten-
nessee:

Southern Railway Company, a Railway Corporation Or-
ganized Under the Laws of the State of Virginia.
Complainant.

Against

Mrs. Ethel Painter, a Citizen and Resident of Knox County,
Tenn., in Her own Right, and Also as Administra-
trix of the Estate of Geoffrey L. Painter, Deceased.
Likewise, at the Date of his Death, a Citizen and
Resident of Knox County, Tenn., Defendant.

Complainant respectfully shows to the Court:

I.

That it is a railway corporation, organized under, and
existing by virtue of the laws of the State of Virginia, and
having its principal office in the City of Richmond, Va.:
and maintaining and operating railway lines through the
[fol. 35] states of Virginia, North Carolina, and Tennessee,
and possibly other States, in accordance with the laws of
said States.

Among the lines of railway owned and operated by it, is
that extending through Knox County and from the City of
Knoxville, in Tennessee, to Asheville, in the State of North
Carolina. Over its lines, complainant is, and was, on Febru-
ary 3, 1939, engaged in the conduct of a general railway
business, operating trains, transporting freight and pas-
sengers, and generally discharging the business of a rail-
way system.

II.

The deceased, Geoffrey L. Painter, and the defendant, Ethel Painter, his wife, had been, for many years, and at the date of the death of Geoffrey L. Painter, were citizens and residents of the State of Tennessee, residing at Knoxville, in Knox County.

III.

Upon said date, February 3, 1939, the intestate, Geoffrey L. Painter, husband of defendant, Mrs. Ethel Painter, was in the employ of complainant as fireman on engine 5031, pulling one of its trains from Bulls Gap, Tennessee, to Asheville, N. C., and came to his death in an accident just beyond the North Carolina-Tennessee line, in the county of Madison, N. C. Complainant avers that the accident occurred through no fault chargeable to it.

The deceased, Geoffrey L. Painter, left surviving him as his widow, the defendant, Ethel Painter; and complainant is informed and believes, and avers as a fact, that said defendant qualified as administratrix upon his estate, in Knox County, Tennessee. He also left surviving him, certain children, some of whom are adult and married, and the names and ages of whom complainant does not deem it necessary to here set out.

The accident occurred some 75 miles from Knoxville, on its Knoxville-Asheville line, over which its crews, in and out of Knoxville, make daily runs.

At both Marshall, N. C., and in Knoxville, Tenn., are and were competent courts for the trial of defendant's claim that complainant Railway Company was and is liable for the death of deceased, and to adjudicate any litigation arising out of same, being courts maintained respectively by the States of North Carolina and the State of Tennessee. Further, United States District Courts operating for the Western District of North Carolina, sit regularly at Asheville, in Buncombe County, N. C., a county adjoining Madison County, N. C., and with judges competent, and with full jurisdiction to try any question of liability and of compensation between defendant and complainant.

Likewise, the United States District Court sits regularly in Knox County, Tenn., the county of defendant's residence,

with judges competent, and with jurisdiction to try any controversy arising out of the death of deceased.

Complainant maintains in Knox County, Tenn., Madison County and Buncombe County, North Carolina, numerous stations and agents upon whom legal process may be conveniently served, and complainant be thus brought into court. And in all of said courts, open fair and expeditious trials may be had. And in all of said counties are numerous able and well qualified attorneys, fully capable of representing defendant in any suit growing out of the death [fol. 37] of her intestate.

So that defendant had available to her, both State and Federal Courts, either in the county where she and her deceased husband had resided for some years, and resided at his death; or in the District in which the accident occurred, in Madison County, in the Western District of North Carolina, and at either point, and especially at Knoxville, complainant's headquarters, any suit arising out of the death of deceased, could be fully and fairly tried, and with convenience both to defendant, Ethel Painter, and complainant herein, Southern Railway Co.

IV.

However, defendant has brought, and is now maintaining a lawsuit against this complainant, in the District Court of the United States, within, and for the Eastern Division of the Eastern Judicial District of Missouri, at the city of St. Louis, within which state, Southern Railway Co. owns and operates no lines, and does no business, other than of an interstate character.

It is proper to say that the court in which defendant has chosen to bring her suit, is some 500 to 600 miles from the residence of Ethel Painter, and farther from the county and Federal Judicial District in which the accident occurred.

Complainant avers that the purpose of the bringing of the suit in said District Court could have been but one, namely, to impose upon this complainant a costly and oppressive defense, and to obtain improper and oppressive [fol. 38] advantages and evade laws of the state of Tennessee and the laws of the State of North Carolina, and to compel it to submit to defendant's unreasonable and unjust

demands, by harrassing and annoying it, and inflicting upon it unreasonable and excessive expense.

V.

Complainant is informed and believes, and avers as a fact, that defendant has confederated with certain attorneys and solicitors for attorneys, who maintain organizations in and about the City of St. Louis, and possibly other cities, for the purpose of inducing persons having claims against complainant and other railways of the country, to bring their suits in the City of St. Louis and State of Missouri.

Complainant avers that by bringing said suit in St. Louis, defendant hoped to evade the laws of her state, and of the State of North Carolina, and to secure the advantage of the Missouri Law, allowing nine jurors to return a verdict; and other procedural advantages. And further, defendant has sought to compel this complainant to incur the expense necessary to take its witnesses, consisting of train men, track men, surgeons, and machinists, to St. Louis, at enormous expense to itself. In order to bring its witnesses before the court at all, it will be necessary for complainant to pay much more than ordinary witness fees and costs, in order to induce the witnesses to attend court at St. Louis. They cannot be compelled to go and in order to secure the benefit of their personal presence and testimony before the jury, it will be necessary for complainant to incur very much greater expense, than if the trial was had in a court of the county where defendant resides, or where the accident occurred.

[fol. 39] In the present case, it will be necessary for complainant to take to St. Louis more than twenty witnesses, including its machinists, shopmen, engineers, trackmen, and inspectors; and this can only be done, if at all, by paying the expenses of transportation of said witnesses, and their maintenance while attending court. And in addition thereto, it would be necessary for it to pay said witnesses for the time lost while in attendance at Court.

VI.

Complainant further shows to the Court that the estate of defendant's intestate, G. L. Painter, is insolvent. Shortly prior to his death, he had filed petition in bankruptcy

in the United States District Court at Knoxville, Tenn., and this bankruptcy proceeding was pending at the date of his death.

VII.

In the event complainant should be successful in its defense, it would be wholly unable to reimburse itself for any costs and expenses to which it is put.

Further, it is impossible to say just when a trial can be had in the District Court of the United States at St. Louis. That court has the normal business growing out of a dense and active population. It is well known that it is impossible for such courts to determine whether a case will be reached on the date for which it is set. Other cases may held over, and complainant, in order to have its witnesses present, and produce their testimony in open court, may have to maintain them there for several days.

Illustrating the difficulty and the enormous expenses to which complainant is subjected in attempting to try its cases in this foreign jurisdiction, the case has already [fol. 40] been set for trial twice in the Court at St. Louis. Complainant has taken its witnesses, either all the way to St. Louis, or part of the way there, when it became apparent that the case could not be reached because of the congested condition of the docket; and on one of the occasions, as complainant is informed and believes, the case was continued by the direction of the court itself.

Complainant avers that the cost of both of these continuances probably amounts to about \$500.00; and in addition, the loss to complainant in the services of its employes has been very great indeed.

It is entirely possible that the same condition may prevail at future settings of the case.

VIII.

The taking of these witnesses to St. Louis for trial will cause great loss of time, will interfere greatly with complainant's work of handling interstate, as well as intrastate shipments, which pass, in large quantities, over its main lines, of which, that from Knoxville to Asheville is one of great importance, and greatly burden complainant in its work of moving interstate commerce.

At Knoxville, its division headquarters, or even at Asheville, or in the State Courts of Knoxville, Tenn., or Marshall, N. C., complainant's witnesses can be in attendance with comparatively little loss of time, and the case can be tried at perhaps less than one fifth the cost, which would be required to try the case in the District Court of the United States, for the Eastern Division of the Eastern Judicial District of Missouri.

[fol. 41]

IX.

Complainant avers that it is gross imposition, and extremely oppressive to require it to go this long distance to St. Louis, Missouri, to defend this controversy, which arose near Knoxville, Tenn., the residence of defendant Ethel Painter.

Complainant further avers that it is such a gross and oppressive burden upon complainant to compel it to defend, in this foreign jurisdiction, a suit that might, with less than one-fifth of the cost, be disposed of at Knoxville, Marshall or Asheville, that this court should exercise its power of injunction to restrain further prosecution of said suit at St. Louis, Missouri.

X.

Complainant avers that all material witnesses to the accident which resulted in said Geoffrey L. Painter's death, reside either in or near to the City of Knoxville, Tennessee, or in the County of Madison, North Carolina, in which the accident occurred, and which is about 75 miles from Knoxville.

It will be necessary to have present at this trial, at least two train crews, aside from several track men, inspectors, machinists, and other employees.

Both the Federal Courts for the Western District of North Carolina, and the Northern Division of the Eastern [fol. 42] District of Tennessee at Knoxville, and the State Courts for Madison County at Marshall, North Carolina, and for Knox County, Tennessee, have complete jurisdiction to try and adjudicate any claim which may arise out of the death of said Geoffrey L. Painter, and the trial of said case in St. Louis, Missouri, or at any other points far distant from these localities, is, and will be oppressive upon complainant, and impose an undue burden on inter-

state commerce. And complainant avers that to require complainant to try such case in the District Court of the United States for the Eastern Division of the Eastern District of Missouri, is to deprive it of its rights under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

XI.

Complainant therefore prays:

(1) That the defendant, Mrs. Ethel Painter, be made defendant hereto, both in her own right, and as administratrix of Geoffrey L. Painter, deceased, and that she appear and answer this bill of complaint, but answer upon oath is expressly waived.

(2) That writ of injunction issue, inhibiting defendant from prosecuting and maintaining her suit now pending against this complainant, in the District Court of the [fol. 43] United States for the Eastern Division of the Eastern Judicial District of Missouri, at the City of St. Louis; and that defendant be enjoined from instituting and prosecuting a similar suit against this complainant, in any jurisdiction other than in the state Courts for Knox County, Tenn., or for Madison County, N. C., or in the U. S. District Courts for the Northern Division of the Eastern District of Tennessee at Knoxville, or for the Western District of North Carolina at Asheville, for recovery of damages alleged to be due for the death of her intestate, Geoffrey L. Painter.

(3) And complainant prays that all necessary proof be heard, and that upon the trial of this case, said injunction be made perpetual.

(4) And it prays for all such further and different relief as in equity it may merit, and for general relief.

This is the first application for writ of injunction in this case.

**SOUTHERN RAILWAY
COMPANY,**

By Chas. H. Smith,

Attorney.

J. A. Sasong,

Chas. H. Smith,

Solicitors.

[fol. 44] State of Tennessee,
Knox County.

J. P. Goodman makes oath that he is Claim Agent of Southern Railway Company, in charge of the litigation arising out of this accident. He is familiar with the facts averred in the foregoing bill of complaint, and the allegations of said bill, in so far as made of his own knowledge, are true, and those upon information and belief, he believes to be true.

J. P. GOODMAN.

Sworn to and subscribed before me this the 22nd day of
May, 1940.

KEILER SMITH,
Notary Public.

(Seal)

My commission expires Oct. 7, 1943.

[fol. 45] Fiat.

To the Clerk and Master of Knox County:

Issue writ of injunction as prayed in the bill upon complainant giving bond in the sum of \$1000.00 conditioned as required by law.

A. E. MITCHELL,
Clerk of Court.

[fol. 46] Subpoena to Answer at Rules.

(Summons Directed to Mrs. Ethel Painter.)

State of Tennessee
Chancery Court at Knoxville

To the Sheriff of Knox County—Greeting:

Summon Mrs. Ethel Painter, to appear before the Chancery Court, at Knoxville, on or before the First Monday of June next, to answer the original Injunction bill which Southern Railway Company have filed in said Court against Mrs. Ethel Painter.

and have you then and there this writ.

Witness, Chas. E. Dawson, Clerk and Master of our said Court, at office in Knoxville, this 27th day of May, 1940.

CHAS. E. DAWSON,

Clerk and Master,

By

Deputy C. & M.

Notice.

To the Above Named Defendant:

You are hereby notified that you are required to make defense in this cause on or before the First Monday of June next, or judgment pro confesso will be entered against you.

CHAS. E. DAWSON,

Clerk and Master,

By

Deputy C. & M.

[fol. 47] Injunction

(Summons directed to Mrs. Ethel Painter, individually, etc.)

State of Tennessee, Knox County Chancery Court at Knoxville

To the Sheriff of Knox County—Greeting:

And to Mrs. Ethel Painter, individually and as administratrix of the estate of Geoffrey L. Painter, deceased.

And to all Counselors, Attorneys, Solicitors and Agents, and to each and every one of them—Greeting:

Whereas Southern Railway Co. has lately filed original injunction bill of Complaint in said Chancery Court at Knoxville, against you, the said above named defendant to be relieved touching the matter set forth in said bill in which it is charged that above named defendant your actings and doings in the premises, are contrary to equity and good conscience, and whereas, the Honorable A. E. Mitchell, Judge of the Chancery Court at Knoxville, Tenn., in said State has ordered that an injunction issue, as prayed by complainant.

Therefore, in consideration of said fiat, and of the particular matters in said Bill set forth, you, the said and the persons before named, and each and every one of you, are hereby strictly commanded and enjoined, under the penalty of a contempt of Court, that you do absolutely desist and refrain from prosecuting and maintaining your suit now pending against complainant in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri at the City of St. Louis, and you are enjoined from instituting and prosecuting a similar suit against complainant in any jurisdiction other than the State Courts for Knox County, Tennessee, or from Madison County, North Carolina, or in the United States District Courts for the Northern Division of the Eastern District of Tennessee at Knoxville, or for the Western District of North Carolina at Asheville for recovery of damages alleged to be due for the death of her intestate, Geoffrey L. Painter, until the further order of the said Chancery Court in the premises.

Witness my hand at office, this 27th day of May A. D. 1919.

CHAS. E. DAWSON,

Clerk and Master D. C. & M.

{fol. 48}

Exhibit "B"

In the Chancery Court for Knox County, Tenn.

Southern Railway Company,

vs.

Mrs. Ethel Painter, Admx.

Upon motion of the complainant, and it appearing to the Court that the defendant has not yet answered the bill filed against her in the above styled cause, it is hereby ordered that complainant may amend its said bill by adding to paragraph V thereof the following averment, to-wit:

"Further, complainant does not maintain regular employed attorneys at St. Louis as it does in Tennessee, and it will be necessary for it to specially employ counsel whose compensation will add greatly to the cost of defense, and which expense would not be incurred in Tennessee."

It is further ordered that said amendment may be made and shall be treated as made upon the face of the bill.

Approved for Entry:

.....
Chancellor.

[fol. 49] Notice of Motion For Injunction.

(Filed June 20, 1940.)

In the District Court of the United States For the Eastern
Division of the Eastern Judicial District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey
L. Painter, Deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

To: The above named defendant, Southern Railway Com-
pany, a corporation; or Fordyce, White, Mayne, Wil-
liams & Hartman; E. C. Hartman; and Kramer,
Campbell, Costello & Wiechert, its attorneys of rec-
ord in the above entitled cause:

Please Take Notice that on the 1st day of July, 1940,
at 10 o'clock A. M., or as soon thereafter as counsel may
be heard, in the District Court of the United States for
the Eastern Division of the Eastern Judicial District of
Missouri, in court room 3 thereof, at the United States
Court House and Customs House, 1114 Market Street, in
the City of St. Louis, Missouri, upon the verified suppl-
emental complaint in the above entitled cause, and upon all
the files, pleadings and proceedings herein, and upon the
papers, documents and proceedings referred to therein, a
motion will be made and presented to the Court by plaintiff
for a preliminary injunction against the defendant herein
in accordance with the prayer of said supplemental com-
plaint, and for such other or further relief in the premises
as to the Court may seem just and proper. A copy of said
[fol. 50] motion is served upon you herewith.

Dated at St. Louis, Missouri, this 20th day of June, 1940.

MARK D. EAGLETON,

Attorney and Solicitor for Plaintiff.

I hereby certify that I served the above and foregoing notice of motion for injunction upon the defendant, Southern Railway Company, on the 20th day of June, 1940, by mailing copies thereof to its attorneys at their addresses as follows:

Fordyce, White, Mayne, Williams & Hartman,
506 Olive Street,
St. Louis, Missouri;

E. C. Hartman,
506 Olive Street,
St. Louis, Missouri;

Kramer, Campbell, Costello & Wiechert,
First National Bank Building,
East St. Louis, Illinois.

MARK D. EAGLETON,
Attorney and Solicitor for Plaintiff.

[fol. 51] Motion For Injunction.

(Filed June 20, 1940.)

In the District Court of the United States For the Eastern
Division of the Eastern Judicial District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey
L. Painter, Deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

Now comes Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, deceased, the plaintiff in the above entitled cause, by Mark D. Eagleton, her attorney and solicitor, and moves the Court to grant a writ of injunction against the defendant, its agents and servants, and any and all persons acting by, under or through it, pending this suit, and until the further order of the Court, conformable to the prayer of the supplemental complaint in this cause filed.

MARK D. EAGLETON,
Attorney and Solicitor for Plaintiff.

I hereby certify that I served the above and foregoing motion upon the defendant, Southern Railway Company, on the 20th day of June, 1940, by mailing copies thereof to its attorneys at their addresses as follows:

Fordyce, White, Mayne, Williams & Hartman,
506 Olive Street,
St. Louis, Missouri;

E. C. Hartman,
506 Olive Street,
St. Louis, Missouri;

Kramer, Campbell, Costello & Wiechert,
First National Bank Building,
East St. Louis, Illinois.

MARK D. EAGLETON,
Attorney and Solicitor for Plaintiff.

[fol. 52] Temporary Restraining Order.

(Received, Filed & Entered June 21, 1940.)

In the District Court of the United States For the Eastern
Division of the Eastern District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey
L. Painter, deceased, Plaintiff,
No. 300. vs.

Southern Railway Company, a Corporation, Defendant.

Whereas, in the above entitled cause, on June 7, 1940, after notice thereof having been duly given defendant, plaintiff and defendant appeared and plaintiff requested leave to file a verified supplemental complaint praying for a preliminary and permanent injunction and further requesting the issuance of a temporary injunction but the Court not being fully advised took the request for a temporary injunction under advisement and requested the parties to submit authorities, and now upon examination of the authorities submitted and the briefs of counsel it appearing that the facts stated in the verified supplemental complaint if sustained will warrant relief and it further appearing from said verified supplemental complaint that there is danger of immediate and irreparable injury, loss or damage being caused to the plaintiff before a hearing can be

had thereon, unless said defendant is, pending such hearing, restrained as herein set forth, for the reason that the defendant's institution and prosecution of an injunction proceeding against plaintiff in the Chancery Court of Knox County, State of Tennessee, wherein and whereby plaintiff was and is enjoined and restrained from prosecuting and maintaining her action under the Federal Employers' Liability Act in this Court in this cause, deprives plaintiff of a federal right specifically granted her by the laws of the United States, and interferes with, impairs, arrests and tends to frustrate and defeat the jurisdiction of this Court of and over plaintiff's said action under the Federal Employers' Liability Act herein, and [fol. 53] of and over the subject-matter thereof and the parties thereto; and,

Whereas, notice was duly given defendant that plaintiff would move the Court for a restraining order herein upon the filing of said verified supplemental complaint, and the Court having heard counsel thereon at the time of the filing of said supplemental complaint,

Now, Therefore, take notice that you, Southern Railway Company, a corporation, defendant herein, your agents, servants, attorneys, counselors, or anyone acting by, through or for you, are hereby temporarily restrained and enjoined from:

1. In any way interfering, or in any way doing any matter or thing tending to interfere, with the liberty of the plaintiff, Ethel Painter, as administratrix of the estate of Geoffrey L. Painter, deceased, in carrying on, prosecuting and maintaining that certain action under the Federal Employers' Liability Act, for injury to and death of her said decedent which occurred on or about the 3rd day of February, 1939, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff, vs. Southern Railway Company, a Corporation, Defendant";

2. In any way interfering, or in any way doing any matter or thing tending to interfere, with the jurisdiction of this Court of and over said action of plaintiff under the Federal Employers' Liability Act, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix

of the Estate of Geoffrey L. Painter, Deceased, Plaintiff, vs. Southern Railway Company, a Corporation, Defendant," or with the jurisdiction of this Court of and over the subject-matter thereof or the parties thereto;

3. Taking any except dismissal proceedings in that certain action pending in the Chancery Court of Knox County, State of Tennessee, wherein said Southern Railway Company, a corporation, is complainant, and the plaintiff herein, Ethel Painter, as administratrix of the estate of Geoffrey L. Painter, deceased, and in her own right as an individual, is defendant, and wherein it is sought to enjoin and restrain said Ethel Painter, as administratrix aforesaid and individually in her own right, from prosecuting and maintaining said action of plaintiff under the Federal Employers' Liability Act, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff, vs. Southern Railway Company, a Corporation, Defendant."

This restraining order shall become effective upon filing and entry, and the giving of security by the plaintiff, by filing a bond in the sum of \$250.00, to be approved by the Clerk of this Court, or by depositing the sum of \$250.00 with the Clerk of this Court, for the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained hereby.

This restraining order will remain in force only until the hearing and determination of the motion for a preliminary injunction herein. The matter of the issuance of a preliminary injunction is hereby set down for hearing on the 1st day of July, 1940, at 10:00 o'clock in the forenoon, at the United States Court House and Customs House in the City of St. Louis, Missouri, and said defendant is hereby notified of said hearing.

It is further ordered that a copy of this order certified upon the hand of the Clerk and the seal of this Court be served upon the defendant, Southern Railway Company, a corporation.

Signed and issued on 9th day of June, 1940, at 2:00 o'clock P. M.

J. C. COLLET,
United States District Judge.

\$250.00 cash deposited by Mard D. Eagleton, atty for plaintiff June 21, 1940 pursuant to within temporary restraining order.

JAMES J. O'CONNOR,
Clerk.

[fol. 55] Motion To Dismiss.

(Filed June 24, 1940.)

Comes now defendant and moves the court to dismiss plaintiff's supplemental complaint for the following reasons:

(1) Because the Court lacks jurisdiction over the subject matter thereof; and

(2) Because said supplemental complaint fails to state a claim upon which relief can be granted.

KRAMER, CAMPBELL, COSTELLO &
WIECHERT,

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,
E. C. HARTMAN,

Attorneys for Defendant.

Copy mailed to plaintiff's attorneys this 24th day of June, 1940.

E. C. HARTMAN,
Attorney for Defendant.

[fol. 56] Findings of Fact and Conclusions of Law.

(Filed July 10, 1940.)

In the District Court of the United States Within and for
the Eastern Division of the Eastern Judicial Dis-
trict of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, Deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

The above entitled cause came on for hearing upon the plaintiff's motion for a preliminary injunction, in the above entitled Court, Honorable J. C. Collet, Judge of said Court, presiding, on the 1st day of July, 1940, and both parties to said cause appearing and being represented by their counsel, and the Court having duly considered said motion, the plaintiff's verified supplemental complaint, and the files, pleadings and proceedings in this cause; and the Court having heard the arguments of counsel, and being fully advised in the premises, finds the following:

Findings of Fact.

I.

The defendant, Southern Railway Company, a corporation organized and existing under the laws of the State of Virginia, and a citizen and resident of that State, was and is a common carrier by railroad engaged in interstate commerce in various of the several states of the United States, [fol. 57] and doing business as such common carrier in the City of St. Louis, State of Missouri, in the Eastern Division of the Eastern Judicial District of Missouri, and operating its railroad trains in, into and out of said City of St. Louis.

II.

On February 3, 1939, one Geoffrey L. Painter, a citizen and resident of the City of Knoxville, County of Knox, State of Tennessee, while in the course of his employment by the defendant as a locomotive fireman on one of defendant's interstate trains, and while engaged in interstate commerce and transportation, sustained injuries causing his death as a direct result of the derailment of said train at or

near the town of Paint Rock, County of Madison, State of North Carolina, and left surviving him his wife, Ethel Painter, and several minor dependent children.

III.

Thereafter, said Ethel Painter, also a citizen and resident of the City of Knoxville, County of Knox, State of Tennessee, was duly appointed Administratrix of the Estate of Geoffrey L. Painter, Deceased, by the Probate Court of Knox County, Tennessee, and, on August 31, 1939, as such administratrix, filed an action in this Court (being the primary action in this cause in this Court), under the Federal Employers' Liability Act (45 U. S. C. A. §§ 51-59), to recover from said Southern Railway Company damages for the injuries to and death of her decedent, for the benefit of his surviving widow, his surviving minor dependent children, and his estate. Summons was duly issued and served upon the defendant, Southern Railway Company, in said action, and said defendant duly appeared and filed its answer to plaintiff's complaint in said action, without challenge to the jurisdiction of this Court by said answer or otherwise. The matter, after various proceedings in said action, and at a time when issue had been joined upon the pleadings in said action, said action was set for trial on May 20, 1940, but was continued by the Court of the Court's own motion, and reset for trial on July 8, 1940.

IV.

Ethel Painter, as administratrix aforesaid and individually in her own right, is a proper and necessary witness at the trial of her said action under the Federal Employers' Liability Act pending in this Court in this cause, and her testimony as to facts within her knowledge is and will be pertinent and material to the issues involved in said action.

V.

Thereafter, on May 27, 1940, the defendant herein, Southern Railway Company, filed its bill of complaint in the Chancery Court of Knox County, State of Tennessee, wherein said Southern Railway Company was named as complainant, and said Ethel Painter, as administratrix aforesaid and individually in her own right, was named as defendant, and said Southern Railway Company then secured

upon its said bill of complaint a writ of injunction whereby said Ethel Painter, as administratrix aforesaid and individually in her own right, was restrained and enjoined, and compelled to desist and refrain, under penalty of a contempt of said Chancery Court, from in any manner further prosecuting or maintaining her said action under the Federal Employers' Liability Act in this Court in this cause, and was further enjoined from instituting and prosecuting a similar action against the Southern Railway Company in any jurisdiction other than the state or federal courts in [fol. 59] the City of Knoxville, County of Knox, State of Tennessee, or the state or federal courts having jurisdiction over the County of Madison, State of North Carolina. Copies of said bill of complaint filed in, and said writ of injunction issued by, said Chancery Court of Knox County, Tennessee, together with process requiring answer to said bill of complaint, were duly served upon said Ethel Painter on said 27th day of May, 1940. The said bill of complaint upon which said writ of injunction was issued by the said Chancery Court of Knox County, Tennessee, was founded in the charges, substantially, that the trial in this Court of plaintiff's said action pending herein under the Federal Employers' Liability Act would (a) impose upon said Southern Railway Company greater expense than would the trial of such an action in the City of Knoxville, Knox County, Tennessee, the residence of the plaintiff, Ethel Painter, or in the District of North Carolina which includes the County of Madison of that state, in which the cause of action for the injury to and death of said Geoffrey L. Painter arose, (b) burden said Southern Railway Company in its work of moving interstate commerce, (c) permit said Ethel Painter to avoid the laws of the States of Tennessee and North Carolina, (d) permit said Ethel Painter to secure advantages of the laws of the State of Missouri, and (e) thereby permit said Ethel Painter to obtain improper and oppressive advantages so as to compel said Southern Railway Company to submit to unjust and unreasonable demands made by her, and deprive said Southern Railway Company of its property without due process of law.

VI.

No suit or action, other than the one hereipbefore mentioned as having been filed in this Court in this cause by

[fol. 60] said Ethel Painter, as administratrix aforesaid, has at any time been filed or brought in any State or Federal court to adjudicate the right of the estate, the surviving widow, and the surviving dependent minor children of said Geoffrey L. Painter, or either or any of them, to recover damages for his said injury and death, or to adjudicate the liability of said Southern Railway Company for damages for said injury and death.

VII.

The plaintiff, Ethel Painter, as administratrix aforesaid, desires to maintain and prosecute to a final conclusion in this Court her said action under the Federal Employers' Liability Act pending herein against defendant, Southern Railway Company, and is unable to do so without violating the said injunction of the Chancery Court of Knox County, State of Tennessee, and thereby subjecting herself to possible punishment for contempt.

VIII.

The plaintiff, therefore, by her supplemental complaint filed herein, seeks the aid of this Court by ancillary proceedings to restrain and enjoin the defendant, Southern Railway Company, from further prosecution of its injunction suit in the Chancery Court of Knox County, Tennessee, and to compel defendant to dismiss that injunction proceeding.

Conclusions of Law.

From the foregoing facts, the Court concludes that:

I.

The defendant, Southern Railway Company, is subject to suit, and personal service of process, in the Eastern Division of the Eastern Judicial District of Missouri [fol. 61] in actions brought under the Federal Employers' Liability Act (45 U.S.C.A. §§51-59).

II.

The plaintiff, Ethel Painter, administratrix as aforesaid, had and has a federal right to institute and prosecute in this Court her said action under the Federal Employers' Liability Act against defendant, Southern Railway Com-

pany, for damages for injury to and death of her decedent, Geoffrey L. Painter.

III.

Since August 31, 1939, this Court has had, and now has, specific, complete, sole and exclusive jurisdiction of and over the action of said plaintiff, Ethel Painter, administratrix as aforesaid, under the Federal Employers' Liability Act, to recover damages from defendant, Southern Railway Company, for the injury to and death of her decedent, Geoffrey L. Painter, and of and over the subject-matter thereof and the parties thereto.

IV.

The jurisdiction of this Court having attached to the action of plaintiff, Ethel Painter, as administratrix aforesaid, against defendant, Southern Railway Company, to recover damages for the injury to and death of her decedent under the Federal Employers' Liability Act, and to the subject-matter thereof and the parties thereto, the right of said plaintiff to prosecute her said action in this Court to a final conclusion, and the right of this Court to proceed to a hearing and determination of said action, without interference [Vol. 62] or impairment by proceedings in another court, cannot be intrenched upon.

V.

This Court has the duty, right, power and authority to maintain and exercise its jurisdiction of and over said action under the Federal Employers' Liability Act, and of and over the subject-matter thereof and the parties thereto, until the final object of said action is accomplished and complete justice done between the parties thereto; and, if necessary to that end, to issue its writ of injunction to:

(a) Preserve and protect the proper jurisdiction of this Court of and over the plaintiff's said action under the Federal Employers' Liability Act, and of and over the subject-matter thereof and the parties thereto;

(b) Prevent the parties to said action from doing any matter or thing which tends to interfere with, arrest, impair, frustrate or defeat the jurisdiction of this Court of and over said action under the Federal Employers' Liabil-

ity Act, or of and over the subject-matter thereof or the parties thereto;

(c) Prevent and defeat any attempt by either of the parties to said action to divert this action from this Court to any other court or courts; and

(d) Prevent defendant, Southern Railway Company, from carrying on a suit in a state court when and in so far as such suit interferes with effective trial and determination of the issues involved in plaintiff's said action under the Federal Employers' Liability Act pending in this Court, and of and over which said action this Court has full jurisdiction.

[fol. 63]

VI.

The injunction suit or proceeding instituted by defendant, Southern Railway Company, in the Chancery Court of Knox County, Tennessee, and the injunction secured therein by defendant restraining and enjoining the plaintiff here from further maintaining or prosecuting in this Court her said action under the Federal Employers' Liability Act, and further restraining and enjoining her from instituting or prosecuting a similar action in any state or federal court, other than those designated in said injunction issued by said Chancery Court, (1) interfere with, arrest, impair, and tend to frustrate and defeat the jurisdiction of this Court of and over plaintiff's said action under the Federal Employers' Liability Act pending in this Court against defendant, (2) interfere with, arrest, impair, and tend to frustrate and defeat the due and proper administration of justice, (3) attempt to divert the litigation of an action of and over which this Court had acquired jurisdiction, and of and over the subject-matter of which, and the parties to which, this Court had and has full jurisdiction, to another court or courts, (4) deprive the plaintiff of her absolute federal rights, granted her by the laws of the United States, to institute, maintain, and prosecute to a final conclusion in this Court her said action under the Federal Employers' Liability Act, and (5) work an inequitable and unconscionable wrong upon plaintiff, Ethel Painter, as administratrix aforesaid.

VII.

The Chancery Court of Knox County, State of Tennessee, was without authority or jurisdiction to entertain or consider the injunction suit or proceeding instituted [fol. 64] therein by defendant, Southern Railway Company, against the plaintiff, Ethel Painter, wherein it was sought to abrogate or limit the right of plaintiff, Ethel Painter, given her by the laws of the United States, to institute and prosecute an action under the Federal Employers' Liability Act in any of the jurisdictions prescribed by Section 6 of the Act (45 U. S. C. A. §56), including the Eastern Division of the Eastern Judicial District of Missouri.

Neither the legislatures nor the courts of any state have any right, power, authority or jurisdiction to in any manner interfere with or restrict the jurisdiction of the courts of the United States, or to interfere with or restrict the operation of a law or laws of the United States or any right granted thereunder.

VIII.

The said injunction issued by the said Chancery Court of Knox County, State of Tennessee, although valid and effective on its face, is null, void, and of no force or effect.

IX.

The plaintiff has no adequate remedy at law for relief from said injunction suit or proceeding in the Chancery Court of Knox County, State of Tennessee, or from the injunction issued therein, and, unless such injunction suit or proceeding, and injunction issued therein, be dismissed, this Court cannot properly perform its duties nor properly exercise its jurisdiction, prescribed by the laws of the United States, and plaintiff will be inequitably and unconscionably wronged and suffer irreparable damage.

X.

The plaintiff's supplemental complaint, seeking relief by injunction, ancillary to her primary action herein under the [fol. 65] Federal Employers' Liability Act, is a proper remedy, and an adequate method of securing injunctive relief from the conduct of defendant, Southern Railway Company, in instituting and prosecuting its injunction suit or proceeding in the Chancery Court of Knox County, Ten-

nessee, and a proper and adequate method of initiating the necessary action by this Court to preserve and protect its jurisdiction from interference, arrest, impairment, frustration or defeat.

XI.

Section 265 of the Judicial Code has no application to the relief sought herein by plaintiff's supplemental complaint, and plaintiff's said supplemental complaint, and the relief sought thereby, come within the plenary and inherent powers of this Court and Section 262 of the Judicial Code.

XII.

Plaintiff's motion for a preliminary injunction should be sustained, and a preliminary injunction should be granted plaintiff against the defendant as prayed in plaintiff's supplemental complaint.

Let a preliminary injunction be granted and issue accordingly.

Dated this 10th day of July, 1940.

J. C. COLLET,
United States District Judge.

[fol. 66] (Notice of Motion of Defendant for Order Staying and Superseding Preliminary Injunction until Disposition of Appeal.)

(Filed July 10, 1940.)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

To Mark D. Eagleton and Roberts P. Elam, Attorneys for Plaintiff in above entitled cause:

Please Take Notice that on the 10th day of July, A. D. 1940, at the hour of 9:30 o'clock A. M., or as soon there-

after as counsel can be heard, Southern Railway Company, a corporation, the defendant above named, will present in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in Division No. 3 thereof, before Honorable J. C. Collet, Judge Presiding thereof, its petition asking that the said Court enter an order staying and superseding said preliminary injunction until said appeal shall be finally determined by the said Circuit Court of Appeals upon the above named defendant giving bond, with surety to be approved by the Court, conditioned as provided by Rule 73 of the Rules of Civil Procedure for the District Courts of the United States, and that it fix the amount of said bond and that the same may be approved by this Court, and that the Court [fol. 67] shall enter an order and judgment that upon the filing and approval of such bond all proceedings under said preliminary injunction shall be stayed and superseded until said appeal is finally determined by the said Circuit Court of Appeals, and that the Court shall further order that the said bond shall operate as a supersedeas bond and that said preliminary injunction shall have no force and effect during the pendency of said appeal. At the same time and place, after the said Court has fixed the amount of such supersedeas bond, the defendant will present to the Court for its approval a supersedeas bond, in such sum as the Court may have then fixed, and conditioned as provided by Rule 73 of the Rules of Civil Procedure for the District Courts of the United States, and will ask the said Court to approve the same; and at the same time will ask that the said District Court order, adjudge and decree that the said bond shall be a supersedeas bond, and that all proceedings in said cause on the preliminary injunction entered in this action on July 10th, A. D. 1940, be stayed until said appeal is finally determined; and that it be ordered and adjudged that said preliminary injunction shall be of no force and effect during the pendency of said appeal. The said bond will be signed by the American Surety Company of New York as surety.

A copy of said petition and a copy of said bond proposed to be filed, unsigned, undated and without the amount thereof named therein, is hereby handed to you as counsel of record for plaintiff in said cause.

[fol. 68] At said time and place you may be present, if you so desire, and take such action as you see fit.

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,

E. C. HARTMAN,
506 Olive Street,
St. Louis, Missouri.

BRUCE A. CAMPBELL,

KRAMER, CAMPBELL, COSTELLO
& WIECHERT,
606-618 First National Bank Bldg.,
East St. Louis, Illinois.
Attorneys for defendant.

Service is hereby acknowledged of a copy of above notice, together with copy of the petition referred to therein and proposed bond mentioned therein, this 10th day of July, A. D. 1940, and we consent that said motion may be heard as determined instantler by the Court.

MARK D. EAGLETON,
ROBERTS P. ELAM,

Attorneys for Plaintiff, Ethel
Painter, Administratrix of the
Estate of Geoffrey L. Painter,
Deceased.

[fol. 69] (Writ of Preliminary Injunction and Marshal's
Return.)

(Filed July 12, 1940.)

United States of America,
Eastern District of Missouri,
Eastern Division.—ss.:

In The District Court of the United States Within and for
the Eastern Division of the Eastern Judicial District
of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, Deceased, Plaintiff.
No. 300. vs. Court Room No. 3.
Southern Railway Company, a Corporation, Defendant.

The President of the United States of America to the Southern Railway Company, a corporation,—Greeting:

Whereas, Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, plaintiff in the above entitled cause, has heretofore filed in the District Court of the United States for the Eastern District of Missouri, Eastern Division, a supplemental complaint against the above named defendant, in said cause, and has heretofore obtained an allowance for a preliminary injunction as prayed for in said supplemental complaint,

Now, Therefore, v.e. having regard to the matters in said supplemental complaint contained, do hereby enjoin, inhibit, restrain and command you, the said Southern Railway Company, and your agents, servants and anyone acting by, through or for you, from:

1. In any way interfering, or in any way doing any matter or thing tending to interfere, with the liberty of the plaintiff, Ethel Painter, as Administratrix of the Estate of Geoffrey L. Painter, Deceased, in carrying on, prosecuting, and maintaining that certain action under the Federal Employers' Liability Act, for injury to and death of her said decedent which occurred on or about the 3rd day of February, 1939, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff vs. Southern Railway Company, a Corporation, Defendant;"

2. In any way interfering, or in any way doing any matter or thing tending to interfere, with the jurisdiction of this Court of and over said action of plaintiff under the Federal Employers' Liability Act, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff vs. Southern Railway Company, a Corporation, Defendant," or with the jurisdiction of this Court of and over the subject matter thereof or the parties thereto; and

3. Taking any except dismissal proceedings in that certain action pending in the Chancery Court of Knox County, State of Tennessee, wherein said Southern Railway Company, a corporation, is complainant, and the plaintiff herein, Ethel Painter, as Administratrix of the Estate of Geof-

frey L. Painter, Deceased, and in her own right as an individual, is defendant, and wherein it is sought to enjoin and restrain said Ethel Painter, as administratrix aforesaid and individually in her own right, from prosecuting and maintaining said action of plaintiff under the Federal Employers' Liability Act, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff vs. Southern Railway Company, a Corporation, Defendant."

And we further do hereby enjoin, command and direct you, the Southern Railway Company, a corporation, forthwith to dismiss and set at naught that certain proceeding and cause [fol. 71] of action commenced by you and now pending in the Chancery Court of the County of Knox, State of Tennessee, wherein said Southern Railway Company, a corporation, is complainant, and said Ethel Painter, as Administratrix of the Estate of Geoffrey L. Painter, Deceased, and in her own right as an individual, is defendant, and in and by which said action it is sought to enjoin and restrain said Ethel Painter, as administratrix aforesaid and individually in her own right, from prosecuting or maintaining said action of plaintiff under the Federal Employers' Liability Act, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff vs. Southern Railway Company, a Corporation, Defendant."

Hereof fail not, under the penalty which may ensue.

Witness the Honorable John C. Collet, Judge of the District Court of the United States of America for the Eastern District of Missouri, and the Seal of said Court hereunto affixed.

Issued in St. Louis, in said District, this 10 day of July, A. D. 1940.

Seal
U. S. Dist. Court
East. Div. of the
East. Judicial Dist.
of Missouri.

JAMES J. O'CONNOR, Clerk.
By: Clare Redmond,

Deputy Clerk.

MARK D. EAGLETON and
ROBERTS P. ELAM,
1004 Telephone Building,
St. Louis, Missouri,

Attorneys for Plaintiff.

[fol. 72]

Marshal's Return.

I Hereby Certify that in St. Louis, Missouri, on July 12th, 1940, I executed the within writ by serving the same on the within-named Southern Railway Company, a Corporation, by delivering a true and correct copy of Writ of Preliminary Injunction, as furnished by the Clerk of the Court, to Mr. B. F. Harris, who is Superintendent of the within-named Southern Railway Company, who was in charge at time of service, no higher officers being present.

WILLIAM B. FAHY,

United States Marshal.

Marshal's Fees.....\$4.06.

TILDEN DELANEY,

Deputy.

[fol. 73]

Petition for Supersedeas.

(Filed July 10, 1940.)

In The District Court of The United States for The Eastern Division of the Eastern Judicial District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

Now comes Southern Railway Company, a corporation, defendant in the above entitled cause, by Fordyce, White, Mayne, Williams & Hartman, E. C. Hartman, Kramer, Campbell, Costello & Wiechert and Bruce A. Campbell, its attorneys, and states that it has this day filed a notice of appeal in said cause to the Circuit Court of Appeals for the Eighth Circuit from the interlocutory judgment entered in this cause on July 10th, A. D. 1940, granting, on motion of plaintiff above named, a preliminary injunction, as set forth in said judgment, against the defendant above named; and states that it desires to execute and file a supersedeas bond so that it may have a stay on appeal, and that such bond may also act as a supersedeas bond as to said preliminary injunction during the pendency of said appeal. It further states that it respectfully requests that the Court enter an order, staying and superseding the preliminary injunction issued as aforesaid until the final decision of said Circuit Court of Appeals upon such appeal.

[fol. 74] Defendant respectfully prays that the Court enter an order, staying and superseding said preliminary injunction until said appeal shall be finally determined by the said Circuit Court of Appeals upon the above named defendant giving bond; with surety to be approved by the Court, conditioned as provided by Rule 73 of the Rules of Civil Procedure for the District Courts of the United States; that the Court fix the amount of said bond and that the same may be approved by this Court, and that the Court shall enter an order and judgment that upon the filing and approval of such bond, all proceedings under said preliminary injunction shall be stayed and superseded until said appeal is finally determined by the said Circuit Court of Appeals, and that the Court shall further order that the said bond shall operate as a supersedeas bond; and that said temporary injunction shall have no force and effect during the pendency of said appeal.

All of which is respectfully asked and prayed.

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,

E. C. HARTMAN,

506 Olive Street,
St. Louis, Missouri.

BRUCE A. CAMPBELL,

KRAMER, CAMPBELL, COSTELLO
& WIECHERT,

606-618 First National Bank Bldg.,
East St. Louis, Illinois, Attorneys
for Defendant.

[fol. 75] (Order Staying and Superseding Preliminary Injunction Until Disposition of Appeal.)

(Filed July 10, 1940.)

In The District Court of The United States for the Eastern
Division of the Eastern Judicial District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

And now on this 10th day of July, A. D. 1940, this cause came on to be heard, upon notice to opposite counsel, on defendant's petition that the Court enter an order staying and superseding the preliminary injunction issued on July 10th, A. D. 1940, on motion of plaintiff, against the above named defendant, until said appeal shall be finally determined by the said Circuit Court of Appeals, on the appeal taken by the above named defendant from said order granting said preliminary injunction to the Circuit Court of Appeals for the Eighth Circuit upon the above named defendant giving bond, with surety to be approved by the Court, conditioned as provided by Rule 73 of the Rules of Civil Procedure for the District Courts of the United States; further praying that the Court may fix the amount of said bond and that the same may be approved by this Court, and that the Court shall enter an order and judgment that upon the filing and approval of such bond all proceedings under said preliminary injunction shall be stayed and superseded until said appeal is finally determined by the said Circuit Court of Appeals, and that the Court shall [fol. 76] further order that the said bond shall operate as a supersedeas bond and that said preliminary injunction shall have no force and effect during the pendency of said appeal.

And the Court, having fully considered the said petition, and being fully advised in the premises, allows the prayer of said petition; and orders, adjudges and decrees that the amount of the supersedeas bond in this case, pending said appeal, be and the same is hereby fixed at Two Hundred and Fifty Dollars (\$250.00).

And also now comes the above named defendant, Southern Railway Company, a corporation, and presents a supersedeas bond in the penal sum heretofore fixed by the Court and conditioned as provided by Rule 73 of the Rules of Civil Procedure for the District Courts of the United States, duly executed by the said Southern Railway Company, a corporation, as principal, and by American Surety Company of New York as surety. And the Court having examined said bond and being fully satisfied with the conditions of the same and the surety thereon, and being fully advised in the premises,

It Is Ordered, Adjudged And Decreed by the Court that the said supersedeas bond be and the same is hereby approved.

It Is Further Ordered, Adjudged And Decreed by the Court that said preliminary injunction is hereby stayed and superseded until said appeal from the judgment granting the same shall be fully determined by the United States Circuit Court of Appeals for the Eighth Circuit. That all [fol. 77] proceedings under said preliminary injunction shall be stayed and superseded until said appeal is finally determined by the said Circuit Court of Appeals. That said bond shall operate as a supersedeas bond, and that said preliminary injunction shall have no force and effect during the pendency of said appeal.

J. C. COLLET,

Judge.

[fol. 78]

Supersedeas Bond.

(Filed July 10, 1940.)

Know All Men By These Presents, that we, Southern Railway Company, a corporation, as principal, and American Surety Company of New York, as surety, are held and firmly bound unto Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, in the penal sum of Two hundred and fifty and no 100 Dollars (\$250.00), lawful money of the United States, for the payment of which well and truly to be made we hereby bind ourselves, our successors and assigns, jointly, severally and firmly by these presents.

Witness Our Hands and Seals This 10th Day of July, A. D. 1940.

The Condition of the Above Obligation is Such That,

Whereas, the said Southern Railway Company, a corporation, has filed its notice of appeal in the office of the Clerk of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, appealing to the Circuit Court of Appeals for the [fol. 79] Eighth Circuit from the interlocutory judgment entered as of July, A. D. 1940, granting, on motion of the plaintiff above named, a preliminary injunction as

set forth in said judgment, against the defendant above named; and,

Whereas, the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri has entered an order fixing the amount of and the conditions of a supersedeas bond to be executed by the above named defendant, Southern Railway Company, a corporation, with a surety to be approved by the Court, and staying and superseding said preliminary injunction until said appeal shall be finally determined by the said Circuit Court of Appeals, and providing that the bond to be given shall operate as a supersedeas bond and that said preliminary injunction shall have no force and effect during the pendency of said appeal;

Now, Therefore, if the above bounden, Southern Railway Company, a corporation, shall pay all costs on said appeal and shall satisfy said judgment in said District Court in full, together with costs, interest and damages for delay, if for any reason the said appeal is dismissed, or if the said judgment is affirmed, or shall satisfy in full such modification of said [judgement], and such costs, interest and damages as the appellate court may charge and award, then and in that case this obligation shall be null and void; otherwise to remain in full force and effect.

SOUTHERN RAILWAY COMPANY,
By John B. Hyde, Vice-President.

(Corporate Seal)

Attest:

Guy E. (name illegible),
Assistant Secretary.

AMERICAN SURETY COMPANY
OF NEW YORK,

(name illegible) Resident Vice President.

(Corporate Seal)

Attest:

V. K. Watson,
Resident Assistant Secretary.

Approved 7/10/40. J. C. COLLET.

[fol. 80] Docket Entries In Accordance With Designation
of Appellant.

(Docket Entry of Filing of Complaint, etc.)

August 31, 1939.

Complaint filed and summons issued directed to defendant returnable within twenty days after service.

(Docket Entry of Filing of Marshal's Return of Service
of Summons.)

September 8, 1939.

Marshal's return of service to summons filed. (Executed.)

(Docket Entry of Filing of Answer.)

September 25, 1939.

Answer of defendant to Plaintiff's complaint, filed.

(Docket Entry of Setting of Case for Trial.)

November 8, 1939.

Case set for trial on Monday, January 8, 1940.

(Docket Entry of Resetting of Case for Trial.)

January 2, 1940.

Order heretofore entered setting cause for trial on January 8, 1940, vacated and cause set for trial on March 4, 1940.

(Docket Entry of Filing of Notice of Intention of Plaintiff
to take Depositions.)

January 15, 1940.

Plaintiff's notice of intention to take deposition of witnesses at Knoxville, Tennessee, on January 23, 1940 bearing acknowledgment of service by counsel for defendant, filed.

(Docket Entry of Filing of Depositions on Behalf of Plaintiff.)

February 23, 1940.

Deposition of witness taken on behalf of plaintiff at Knoxville, Tennessee, received and filed.

(Docket Entry of Continuing of Cause to March Term, 1940.)

March 4, 1940.

Cause continued to March Term, 1940.

(Docket Entry of Filing of Amended Complaint.)

March 8, 1940.

Plaintiff's amended complaint filed by leave.

(Docket Entry of Filing of Depositions on Behalf of Plaintiff.)

March 13, 1940.

Depositions of witnesses taken on behalf of plaintiff at Marshall, North Carolina, received and filed.

(Docket Entry of Filing of Motion of Defendant to Require Plaintiff to make Amended Petition more Definite and Certain.)

March 18, 1940.

Motion of defendant to require plaintiff to make amended petition more definite and certain, filed.

(Docket Entry of Overruling of Motion of Defendant to Require Plaintiff to make Amended Petition more Definite and Certain, etc.)

April 1, 1940.

Case set for trial on Monday, May 13, 1940. By leave, motion of defendant to require plaintiff to make amended

complaint more definite and certain, argued, submitted and overruled.

(Docket Entry of Filing of Answer.)

April 12, 1940.

Answer of defendant to plaintiff's first amended complaint, filed.

[fol. 81] (Docket Entry of Resetting of case for Trial on May 20, 1940.)

April 15, 1940.

Order heretofore entered setting cause for trial on May 13, 1940, vacated and cause reset for trial on May 20, 1940.

(Docket Entry of Resetting of Case for Trial on July 8, 1940.)

May 20, 1940.

Cause reset for trial on July 8, 1940.

(Docket Entry of Oral Motion of Plaintiff for Leave to File Supplemental Complaint, etc.)

June 7, 1940.

Oral motion of plaintiff for leave to file supplemental complaint made, heard and submitted on briefs to be presented by June 12, 1940. Plaintiff's notice of said supplemental complaint filed.

(Docket Entry of Filing of Motion of Plaintiff for Writ of Injunction Against Defendants, etc.)

June 20, 1940.

Motion of plaintiff for a writ of injunction against defendant, its agents, etc., pending suit herein, etc., together with notice to docket said motion for hearing on July 1, 1940, filed.

(Docket Entry of Filing of Supplemental Bill of
Complaint.)

June 21, 1940.

[Supplement] bill of complaint, with leave to file same
endorsed thereon, received and filed.

(Docket Entry of Filing of Temporary Restraining
Order, etc.)

June 21, 1940.

Temporary restraining order of Hon. J. C. Collet, received, filed and entered restraining defendant from taking any except dismissal proceedings in certain action pending in the Chancery Court of Knox County, Tennessee, wherein Southern Railway Co., is complainant and Ethel Painter, as administratrix, etc., is defendant, from in any way interfering with the jurisdiction of this court, etc., such order to become effective upon filing, entry, and the giving of security by plaintiff by filing cost bond to be approved by the Clerk in the sum of \$250.00 or by depositing the sum of \$250.00 with said Clerk for the payment of such costs and damages as may be incurred by any party who may have been found to have been wrongfully enjoined or restrained hereby, such restraining order to remain in force only until the hearing and determination of the motion for a preliminary injunction herein set for hearing July 1, 1940, and of which hearing defendant is hereby notified, etc. Plaintiff pursuant to aforesaid order deposits with the Clerk in lieu of bond the sum of \$250.00, which sum is deposited by the Clerk in the Registry of the Court.

(Docket Entry of Filing of Motion of Defendant to Dismiss
Supplemental Complaint.)

June 24, 1940.

Motion of defendant to dismiss plaintiff's supplemental complaint filed.

(Docket Entry of Argument on Motion for Injunction, etc.)

July 1, 1940.

Robert P. Elam, Esq. enters his appearance as associate counsel for plaintiff. Motion of plaintiff for an injunction against defendant argued and submitted and temporary restraining order heretofore entered remain in effect until ruling on aforesaid motion for injunction.

(Docket Entry of Passing of Case for Resetting.)

July 8, 1940.

Cause passed for resetting.

[fol. 82] (Docket Entry of Filing of Findings of Fact and Conclusions of Law, etc.)

July 10, 1940.

Findings of fact and conclusions of law sustaining motion of plaintiff for preliminary injunction, filed and order in accordance therewith granting such preliminary injunction filed and entered, directing plaintiff to give bond in the sum of \$250.00 to be approved by the Clerk of the Court, or deposit said sum in cash with such Clerk for the payment of such costs and damages as may be incurred or suffered by any party, who may have been found to have been wrongfully enjoined or restrained by said preliminary injunction, and such preliminary injunction to remain in full force and effect until the final hearing of this cause, or until further order. Thereafter plaintiff, by her attorney, deposits with the Clerk the sum of \$250. in lieu of the aforesaid bond, which sum is deposited by Clerk in the Registry of the Court. Writ of temporary injunction issued. Defendant's notice of appeal to USCCA, 8th Circuit, from interlocutory judgment entered this day granting plaintiff a preliminary injunction, such notice bearing acknowledgment of service by attorneys for plaintiff, filed. Notice of presentation and petition of defendant for a supersedeas of the aforesaid preliminary injunction, filed and said petition presented and granted in order filed and entered. Supersedeas bond of defendant in the sum of \$250.00 presented, approved and filed. Defendant's design-

nation of contents of record on appeal filed. Stipulation of parties that plaintiff will take no action in this Court until the appeal of defendant from preliminary writ of injunction, etc., and all proceedings arising out of same are finally adjudicated, and that defendant will take no action in the Chancery Court at Knoxville, Knox County, Tennessee, in the case of "Southern Ry. Co. vs. Mrs. Ethel Painter, etc.," until the final adjudication of the aforesaid appeal, filed.

(Docket Entry of Filing of Marshal's Return of Service to Writ of Preliminary Injunction.)

July 12, 1940.

Marshal's return of service to writ of preliminary injunction filed. (Executed.)

[fol. 83] Designation of Contents of Record on Appeal.

(Filed July 10, 1940.)

In the District Court of the United States For the Eastern Division of the Eastern Judicial District of Missouri,

Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a corporation, Defendant.

To Honorable James J. O'Connor, Clerk of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri:

The above named defendant has filed in your office its Notice of Appeal from the interlocutory judgment entered in this cause on July 10th, A. D. 1940, granting, on motion of plaintiff above named, a preliminary injunction, as set forth in said judgment, against the defendant above named.

Under Rule 75 of the Rules of Civil Procedure for the District Courts of the United States, the above named defendant, Southern Railway Company, hereby designates the portions of the record, proceedings, etc., to be contained in the record on appeal, viz.: a full, true, correct and exact copy of all of the record and proceedings in said cause, including therein, but without such specification

limiting the request for a full, true, correct and exact copy of the record, the following:

1. The summons and the return thereon.
2. All the pleadings in said case, including the complaint and amended complaint, the answers of defendant thereto, and all motions filed by the defendant in relation to said pleadings, and all orders entered thereon.
- [Vol. 84] 3. Plaintiff's supplemental complaint for relief, together with notice to defendant's counsel of intention to call up said motion on June 7, 1940, and receipt of defendant's counsel therefor.
4. Order of the District Court, entered on June 19, 1940, granting a temporary restraining order until July 1, 1940, and fixing the last mentioned date for a hearing on plaintiff's motion for a preliminary injunction.
5. Plaintiff's bond on restraining order, and approval of same.
6. Writ issued on preliminary restraining order and return of Marshal showing service of same on defendant.
7. Plaintiff's motion for a preliminary injunction, together with notice to defendant's counsel that the same would be called up for hearing on July 1, 1940, and proof of service on [defendatn's] counsel.
8. Defendant's motion to dismiss plaintiff's supplemental complaint.
9. Order of Court of July 10th, 1940, granting preliminary injunction, together with findings of fact, conclusions of law and opinion, if any, filed by Court.
10. Notice of Appeal to Circuit Court of Appeals for the Eighth Circuit, together with proof of service of Notice by Clerk on plaintiff's counsel.
11. Defendant's petition for supersedeas, etc.
12. Order of the District Court allowing supersedeas, and fixing bond.

13. Supersedeas bond, together with approval thereof by Court.

14. Certificate of the Clerk to transcript of record.

No specification of particular portions of the record and proceedings is intended in any way to limit the general designation that the entire record in this cause be included in said transcript of record.

[fol. 85] Will you please, therefore, prepare record on appeal, as hereby designated, in accordance with the Rules of Civil Procedure for District Courts of the United States?

KRAMER, CAMPBELL, COSTELLO &
WIECHERT,

E. C. HARTMAN,

506 Olive Street,
St. Louis, Missouri.

BRUCE C. CAMPBELL,
KRAMER, CAMPBELL, COSTELLO &
WIECHERT,

606-618 First National Bank Bldg.,
East St. Louis, Illinois,

Attorneys for Defendant.

Service of the above designation is hereby acknowledged this 10th day of July, 1940.

MARK D. EAGLETON, and
ROBERTS P. ELAM,

Attorneys for Plaintiff.

By Roberts P. Elam.

[fol. 86] Clerk's Certificate.

United States of America,

Eastern Division of the Eastern

Judicial District of Missouri.—ss.:

I, Jas. J. O'Connor, Clerk of the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri, Do Hereby Certify the above and foregoing to be a full, true and complete

transcript (except insofar as the same is restricted by the designation of the contents of the record on appeal heretofore set out) of the record and proceedings in case No. 300, wherein Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, deceased is plaintiff and Southern Railway Company, a corporation, is defendant, as fully as the same remains on file and of record in my office.

Seal
U. S. Dist. Court
East. Div.
East. Jud. Dist.
of Mo.

In Testimony Whereof, I have hereunto
subscribed my name and affixed
the seal of said Court at office in
the City of St. Louis, in said
Division of said District this
23rd day of July, in the year of
our Lord, Nineteen Hundred
and forty.

JAS. J. O'CONNOR,
Clerk of said Court,
By C. E. Rudolph,
Deputy Clerk.

Filed Jul. 29, 1940. E. E. Koch, Clerk.

[fol. 87] Statement of Points Relied Upon on Appeal.

In the District Court of the United States for the Eastern
Division of the Eastern Judicial District of Mis-
souri.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, Deceased, Plaintiff,
No. 300. vs. Court Room No. 3.
Southern Railway Company, a corporation, Defendant.

Comes now the defendant (Appellant) in the above en-
titled cause and says that in the record and proceedings in
this cause in the United States District Court manifest
error has occurred to the prejudice of this defendant, to-
wit:

I.

That said United States District Court erred in ordering
and granting to plaintiff the preliminary injunction or-
dered and granted against the defendant.

II.

That said United States District Court was wholly without jurisdiction to grant and issue said order for preliminary injunction as ordered and granted by the said United States District Court.

[fol. 88]

III.

That the plaintiff was a resident of the State of Tennessee and the Southern Railway Company, a corporation, was a resident of the State of Virginia, and under Section 51 of the Judicial Code (28 U. S. C. A. Sec. 112) said United States District Court for the Eastern District of Missouri was not a proper venue for the adjudication and determination of the new equitable relief prayed for in plaintiff's supplemental bill of complaint, and said United States District Court for the Eastern District of Missouri erred in taking jurisdiction over the persons and subject matter involved in plaintiff's supplemental complaint.

IV.

That said United States District Court erred in ordering:

1. That the defendant be restrained from interfering in any way with the liberty of the plaintiff from carrying on, prosecuting and maintaining her cause of action under the Federal Employers' Liability Act for the injuries to and the death of her intestate, Geoffrey L. Painter.

2. That the defendant be restrained from interfering in any way with the jurisdiction of the United States District Court over the subject matter and the parties.

3. That the defendant be restrained from prosecuting and maintaining the cause pending in the Chancery Court [fol. 89] of Knox County, State of Tennessee, wherein the Southern Railway Company, a corporation, is complainant, and Ethel Painter, as Administratrix of the estate of Geoffrey L. Painter, deceased, is defendant.

4. That the defendant is affirmatively ordered, directed and commanded to forthwith dismiss and set at naught the cause of action and proceedings therein pending in the Chancery Court of the County of Knox, State of Tennessee,

wherein, said Southern Railway Company, a corporation, is complainant, and said Ethel Painter, Administratrix of the estate of Geoffrey L. Painter, deceased, is defendant.

V.

That said United States District Court erred in assuming control over the acts of plaintiff as Administratrix of the estate of Geoffrey L. Painter, deceased, - contrary to and in violation of the order and decree of the Chancery Court of the County of Knox, State of Tennessee.

VI.

That the said rights, powers, privileges, duties and obligations of the plaintiff, Ethel Painter, Administratrix of the estate of Geoffrey L. Painter, deceased, were created and are controlled by the laws, judgments, orders and decrees of the State of Tennessee, acting by and through its duly appointed officers, agents and servants, and the United States District Court erred in exercising jurisdiction over the plaintiff contrary to the decree and order of the Chancery Court of the County of Knox, State of Tennessee, which had prior jurisdiction over the person of plaintiff, both individually and in her representative capacity, and of the subject matter in Tennessee.

VII.

That the Chancery Court of the County of Knox, State of Tennessee, had jurisdiction of the subject matter and the parties in the cause, wherein, the Southern Railway Company was complainant and Ethel Painter, Administratrix of the estate of Geoffrey L. Painter, deceased, was defendant, and the decree of said Court was and is a valid, subsisting and binding decree and judgment upon the parties and cannot be collaterally attacked by decree and order of the United States District Court, and said United States District Court erred in ordering and decreeing that the Southern Railway Company be restrained and interfered with in carrying in full force and effect the decree and order of said Chancery Court of the County of Knox, State of Tennessee.

VIII.

That all powers, rights, authority and duties imposed upon the said Ethel Painter, as Administratrix of the

estate of Geoffrey L. Painter, deceased, are controlled and limited solely and exclusively by the laws of the State of Tennessee and the orders and decrees of the courts of Tennessee having jurisdiction over the said Ethel Painter, Administratrix of the estate of Geoffrey L. Painter, deceased, [fol. 91] ceased, and the order and decree of said United States District Court insofar as it assumed control over the rights, powers, privileges, duties and immunities granted to and imposed upon the said Ethel Painter, Administratrix of the estate of Geoffrey L. Painter, deceased, and Southern Railway Company were erroneous, invalid and void and of no effect.

IX.

That the United States District Court erred in failing to give full faith and credit to the judicial proceedings of the State of Tennessee in the cause pending in the Chancery Court of the County of Knox, State of Tennessee, wherein, Southern Railway Company was complainant and the said Ethel Painter, Administratrix, was defendant, in violation of Article IV, Sec. 1 of the Constitution of the United States.

X.

That the proceedings in the Chancery Court of the County of Knox, State of Tennessee, was a final determination of the issues involved in the United States District Court; that said decree, orders and judgments of the Chancery Court of the County of Knox, State of Tennessee, was a complete bar to the judgment of the United States District Court and was res adjudicata to the issues involved, and the United States District Court erred in failing to give full faith and credit to the judicial proceedings of said Chancery Court of the County of Knox, State of [fol. 92] Tennessee, in violation of Article IV, Sec. 1 of the Constitution of the United States.

XI.

The order, decree and judgment of the District Court in granting the temporary writ of injunction was erroneous

and in violation of Section 265 of the United States Judicial Code (28 U. S. C. A. Sec. 579).

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,

E. C. HARTMAN,
506 Olive Street,
St. Louis, Missouri.

KRAMER, CAMPBELL,
COSTELLO & WIECHERT,

BRUCE A. CAMPBELL,

NORMAN J. GUNDLACH,
606-618 First National Bank Bldg.,
East St. Louis, Illinois.

Attorneys for Defendant.

Endorsed: Filed in U. S. Circuit Court of Appeals on
July 29, 1940.

[fol. 93] Order as to Setting of Case for Hearing at November Term, 1940, at St. Louis, Mo.)

United States Circuit Court of Appeals,
Eighth Circuit.

May Term, 1940.

Monday, August 5, 1940.

Southern Railway Company, Appellant,
No. 11,794. vs.
Ethel Painter, Admr., etc.

Appeal from the District Court of the United States for
the Eastern District of Missouri.

Motion of appellee has been filed to advance this cause on the docket for an early hearing and determination of the appeal, and suggestions of appellant have been filed in opposition. Since filing thereof counsel for each of the parties has indicated to the Clerk of this Court that they do not wish to personally present these matters and that a setting of this cause for hearing at the November Term

1940 of this Court at St. Louis, Missouri, will be satisfactory inasmuch as counsel reside in St. Louis.

Therefore, and for the reason that the final setting of cases for the intervening October Term 1940 of this Court has been prepared, It is ordered by this Court that this cause be placed on the calendar of cases for hearing on the first day on which cases will be assigned for hearing at the November Term 1940 of this Court at St. Louis, Missouri.

August 5, 1940.

[fol. 1] (Stipulation for Filing of Copy of Order Granting Preliminary Injunction and Adding Same to Printed Record.)

In the United States Circuit Court of Appeals.

Southern Railway Company, a corporation, Appellant,
 No. 11,794. vs. Civil.
 Ethel Painter, Administratrix of the Estate of Geoffrey
 L. Painter, Deceased, Appellee.

It is hereby stipulated and agreed by and between the parties hereto that the order of the District Court granting preliminary injunction, entered of record in the District Court on July 10, 1940, may be added to and made a part of the appellate record in this cause.

MARK D. EAGLETON,
 ROBERTS P. ELAM,

Attorneys for Appellee.

FORDYCE, WHITE, MAYNE,
 WILLIAMS & HARTMAN,

KRAMER, CAMPBELL, COS-
 TELLO & WIECHERT,

Attorneys for Appellant.

Dated January 22, 1941.

(Endorsed): No. 11,794. Stipulation for filing of copy of Order granting preliminary injunction and adding same to printed record. Filed in U. S. Circuit Court of Appeals on January 22, 1941.

[fol. 3] (Order Granting Preliminary Injunction, July 10, 1940.)

In the District Court of the United States Within and for the Eastern Division of the Eastern Judicial District of Missouri.

Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff,

No. 300. vs. Court Room No. 3.

Southern Railway Company, a Corporation, Defendant.

This cause coming on to be heard on the 1st day of July, 1940, upon the motion of Ethel Painter, Administratrix

of the Estate of Geoffrey L. Painter, Deceased, plaintiff in said cause, for a preliminary injunction, and upon plaintiff's verified supplemental complaint, and upon the files, records and proceedings in said cause, and after hearing counsel for the respective parties, and it appearing to the Court that it is necessary to prevent immediate and irreparable damage for the reason that the acts and the conduct of the defendant in instituting and prosecuting an injunction proceeding against plaintiff in the Chancery Court of Knox County, State of Tennessee, enjoining and restraining plaintiff from prosecuting and maintaining her action in this Court in this cause under the Federal Employers' Liability Act, deprives plaintiff of a Federal right specifically granted her by the laws of the United States, and interferes with, impairs, arrests, and tends to frustrate and defeat jurisdiction of this Court of and over plaintiff's said action under the Federal Employers' Liability Act, and of and over the subject-matter thereof and the parties thereto,

It Is Ordered, Adjudged and Decreed that a preliminary injunction be, and it hereby is, granted plaintiff against the defendant, its agents, servants, and anyone acting by, through or for it, restraining it and them from:

1. In any way interfering, or in any way doing any matter or thing tending to interfere, with the liberty of the plaintiff, Ethel Painter, as Administratrix of the Estate of Geoffrey L. Painter, Deceased, in carrying on, prosecuting, and maintaining that certain action under the Federal Employers' Liability Act, for injury to and death of her said decedent which occurred on or about the 3rd day of February, 1939, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff vs. Southern Railway Company, a Corporation, Defendant;"

2. In any way interfering, or in any way doing any matter or thing tending to interfere, with the jurisdiction of this Court of and over said action of plaintiff under the Federal Employers' Liability Act, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff vs. Southern Railway Company, a Corporation, Defendant;"

ant." or with the jurisdiction of this Court of and over the subject-matter thereof or the parties thereto; and

3. Taking any except dismissal proceedings in that certain action pending in the Chancery Court of Knox County, State of Tennessee, wherein said Southern Railway Company, a corporation, is complainant, and the plaintiff herein, Ethel Painter, as Administratrix of the Estate of Geoffrey L. Painter, Deceased, and in her own right as an individual, is defendant, and wherein it is sought to enjoin and restrain said Ethel Painter, as administratrix [fol. 5] aforesaid and individually in her own right, from prosecuting and maintaining said action of plaintiff under the Federal Employers' Liability Act, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff vs. Southern Railway Company, a Corporation, Defendant."

And It Is Further Ordered, Adjudged And Decreed that the defendant, Southern Railway Company, be, and it hereby is, enjoined, commanded, and directed to forthwith dismiss and set at naught that certain proceeding and cause of action commenced by it and now pending in the Chancery Court of the County of Knox, State of Tennessee, wherein said Southern Railway Company, a corporation, is complainant, and said Ethel Painter, as Administratrix of the Estate of Geoffrey L. Painter, Deceased, and in her own right as an individual, is defendant, and in and by which said action it is sought to enjoin and restrain said Ethel Painter, as administratrix aforesaid and individually in her own right, from prosecuting or maintaining said action of plaintiff under the Federal Employers' Liability Act, pending in this Court in this cause, and entitled "Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff vs. Southern Railway Company, a Corporation, Defendant."

And It Is Further Ordered that plaintiff forthwith give a penal bond in the sum of \$250.00, to be approved by the Clerk of this Court, or deposit the said sum in cash with the Clerk of this Court, for the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or re-

strained by said preliminary injunction, and that said preliminary injunction remain in full force and effect until [fol. 6] the final hearing of this cause and until the further order of this Court.

Dated July 10th, 1940.

J. C. COLLET,
United States District Judge.

July 10, 1940.

\$250.00 in cash deposited by Mark D. Eagleton, Atty. for Plaintiff, in lieu of Bond.

JAMES J. O'CONNOR,
Clerk, United States District Court.

Endorsed: Filed July 10, 1940. Jas. J. O'Connor, Clerk.

[fol. 7] United States of America,
Eastern District of Missouri—ss.:

I, James J. O'Connor, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original Order granting preliminary injunction in Case No. 300, filed July 10, 1940,

Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, Plaintiff,

vs.

Southern Railway Company, a Corporation, Defendant.

now remaining among the records of the said Court in my office.

	In Testimony Whereof, I have here-
(Seal)	unto subscribed my name and
U. S. Dist. Court	affixed the seal of the aforesaid
East. Div.	Court at St. Louis, Mo., this
East. Jud. Dist.	21st day of January, A. D. 1941.
of Mo.	

JAMES J. O'CONNOR, Clerk,
By Anna R. Martin, Deputy Clerk.

(Endorsed): No. 11,794. Certified copy of Order granting Preliminary Injunction. Filed in U. S. Circuit Court of Appeals on January 22, 1941.

[fol. 77] And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz.:

(Appearance of Counsel for Appellant.)

United States Circuit Court of Appeals,
Eighth Circuit.

Southern Railway Company, a corporation, Appellant,
No. 11,794. vs.
Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, deceased.

The Clerk will enter my appearance as Counsel for the Appellant.

BRUCE A. CAMPBELL,
NORMAN J. GUNDLACH,
606-618 First National Bank
Bldg., E. St. Louis, Ill.

S. W. FORDYCE,
E. C. HARTMAN,
506 Olive St.,
St. Louis, Mo.

(Endorsed): Filed in U. S. Circuit Court of Appeals,
July 29, 1940.

(Appearance of Counsel for Appellee.)

The Clerk will enter my appearance as Counsel for the Appellee.

MARK D. EAGLETON,
ROBERTS P. ELAM.

(Endorsed): Filed in U. S. Circuit Court of Appeals,
Nov. 15, 1940.

[fol. 78] (Order of Submission.)

November Term, 1940.

Monday, November 18, 1940.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Bruce A. Campbell for appellant, continued by Mr. Roberts P. Elam for

appellee, and concluded by Mr. Bruce A. Campbell for appellant.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

[fol. 79]

(Opinion.)

United States Circuit Court of Appeals,
Eighth Circuit.

No. 11,794.—NOVEMBER TERM, A. D. 1940.

Southern Railway Company, a
corporation,

Appellant,

vs.

Ethel Painter, Administratrix of
Geoffrey L. Painter, deceased,
Appellee.

} Appeal from the Dis-
trict Court of the
United States for
the Eastern Dis-
trict of Missouri.

[January 10, 1941.]

Mr. Bruce A. Campbell (Mr. E. C. Hartman, Mr. Norman J. Gundlach, Messrs. Fordyce White, Mayne, Williams & Hartman, and Messrs. Kramer, Campbell, Costello & Wiechert, were with him on the brief) for Appellant.

Mr. Roberts P. Elam (Mr. Mark D. Eagleton was with him on the brief) for Appellee.

Before GARDNER, WOODROUGH and JOHNSON, Circuit Judges.

WOODBROUGH, Circuit Judge, delivered the opinion of the court.

The Southern Railway Company appeals from an injunctive order restraining it from enforcing an injunction issued at its instance by a state court of Tennessee. The railway company was sued in the federal court for the Eastern District of Missouri by Ethel Painter, administratrix of the estate of Geoffrey L. Painter, on the ground that the railway company had negligently caused the death of her intestate and that she was entitled to damages therefor under the provisions of the Federal Employers' Liability Act (45 U.S.C.A. 51-59). The company answered the complaint filed in the federal court and denied liability; it did not question the venue, nor did it deny that the court had jurisdiction of the cause. Thereafter it instituted an action in the chancery court of Knox county at Knoxville, Tennessee, and there pleaded that Mrs. Painter and her deceased husband were at the time of the accident which caused his death, citizens of Tennessee; that the accident occurred in Tennessee; that witnesses to the accident lived and worked in Tennessee, and that it would disrupt the railway's business and cause it great expense to try Mrs. Painter's cause of action where it had been brought, in the Eastern District of Missouri at St. Louis, in which district the railway did only an interstate business. It alleged that the estate of Geoffrey L. Painter was insolvent and that if it should be successful in its defense of the action by the administratrix, it could not recover its expenditures. Stating that the action could be conveniently tried by the parties in the courts of Tennessee or of North Carolina, it alleged that the action was brought in St. Louis to obtain for the administratrix an unfair and inequitable advantage, and it prayed that the chancery court enjoin the administratrix from prosecuting her action in the federal court for the Eastern District of Missouri, or in any other state or federal court which did not sit in certain specified cities or towns, some in Tennessee and some in North Carolina. The chancery court granted the injunction.

The administratrix then filed a supplemental bill in her original suit in the federal district court, praying that the railway be enjoined from enforcing the injunction issued by the chancery court of Knox county, Tennessee. The railway contended upon motion to dismiss the supplemental bill, that the federal court lacked jurisdiction over the subject matter thereof, and that the relief could not be granted; that the relief sought was an injunction against proceedings in a state court, contrary to the prohibition of Sec. 265 of the Judicial Code. The district court proceeded to hearing upon the supplemental bill and issued a preliminary injunction against the railway. The holding was that the injunction issued by the Tennessee court interfered with the jurisdiction of the federal court which had attached for trial of the merits of the administratrix's claim for damages, and that the federal courts were authorized by Sec. 262 of the Judicial Code to protect their jurisdiction by issuing "all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdiction". The railway company appeals.

It does not contend that the federal district court for the Eastern District of Missouri lacked jurisdiction of the complaint which the administratrix filed therein against it under the Federal Employers' Liability Act 45 U.S.C.A. 51-59. That Act provides, 45 U.S.C.A. 56,

"Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action."

See *Moore v. C. & O. Ry. Co.*, 291 U.S. 205; *Hoffman v. Foraker*, 274 U.S. 21. The Railway Company does not contend that it was not doing business in the Eastern District of Missouri, and the trial court found as a fact that it was and is so doing business, "operating its railroad trains in, into and out of said City of Saint Louis".

The railway company contends, first, that the injunction issued by the Tennessee chancery court is a judgment which cannot be attacked collaterally but must be given full faith and credit; and second, that the federal district court had no power to enjoin against enforcement of the Tennessee injunction, since to do so would be enjoining proceedings in a state court contrary to Sec. 265 of the Judicial Code.

The injunction of the Tennessee court was granted upon ex parte application of the railway company. The administratrix contends that although that court had jurisdiction of the parties, it did not have jurisdiction of the subject matter of the action, that is, to enjoin a party from proceeding with an action in personam for a money judgment pending in a federal court. In answer to this, the railway company contends that its action in Tennessee for injunction was in personam against the administratrix, and that the decree should not be construed as an injunction against the federal court. It cites as authority, Roberts' Federal Liabilities of Carriers, (2d Ed.) Vol. 2, Sec. 962, p. 1855, where a quotation to this effect is given from High on Injunctions, Sec. 106. Also 14 R.C.L. Sec. 114, pp. 413-14; *L. & N. R. Co. v. Pagen*, 172 Tenn. 593, 113 S.W.2d 743. It contends that upon this construction of the injunction suit it should be ruled that actions under the Federal Employers' Liability Act may be enjoined by a state court, citing *Reed's Administratrix v. I. C. R. Co.*, 182 Ky. 455, 206 S.W. 794; *Chic., M. & St. P. R. Co., v. McGinley*, 175 Wis. 565, 185 N.W. 218; *N.Y.C. & St. L. R. Co. v. Matzinger*, 136 Oh. St. 271, 25 N.E.2d 349; *N.Y.C. & St. L. R. Co. v. Nortoni*, 331 Mo. 764, 55 S.W.2d 272, 85 A.L.R. 1345 (state court actions enjoined); and *Bryant v. Atlantic Coast Line Co.*, 2 Cir., 92 F.2d 569 (a federal court action enjoined). The railway company also contends that the injunction issued by the federal court pursuant to the prayer of the supplemental bill was one against the Tennessee court rather than one merely in personam against the railway company.

It cites *Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co.*, 309 U.S. 4, to support its point that the realistic effect of the injunction process must be recognized, and we deem that case applicable and controlling, not only on the proposition that such construction should be given to injunctions issued by federal courts, but also on the proposition that a similar realistic construction should be given to injunctions issued by courts of a state. The effect of the Tennessee injunction is to oust the federal district court of its jurisdiction over the case pending for damages as really as the injunction issued pursuant to the supplemental bill ousts the jurisdiction of the Tennessee chancery court. Nearly all cases which discuss respective jurisdiction of state and federal courts decide that there is a certain parity of respect which each must have for the other. In discussing the effect of Sec. 265 of the Judicial Code, the Supreme Court of the United States said in *Essanay Film Co. v. Kane*, 258 U.S. 358, 361,

“Since 1793, the prohibition of the use of injunction from a federal court to stay proceedings in a state court has been maintained continuously, and has been consistently upheld. *Hull v. Burr*, 234 U.S. 712, 723, and cases cited. In exceptional instances, the letter has been departed from while the spirit of the prohibition has been observed; for example, in cases holding that, in order to maintain the jurisdiction of a federal court properly invoked, and render its judgments and decrees effectual, proceedings in a state court which would defeat or impair such jurisdiction may be enjoined. (citing cases). The effect of this, as will be observed, is but to enforce the same freedom from interference, on the one hand, that it is the prime object of Sec. 265 to require on the other.”

We cannot give the Tennessee injunction the limited in personam character which the railway company would ascribe to it.

The railway company contends that the jurisdiction which the Congress conferred on the federal courts to try actions brought under the Federal Employers' Liability

Act is subject to a qualification which must be implied, that Congress intended that any suit prosecuted under the Act in a state other than that of plaintiff's domicile might be halted by a court of the domicile, if it should appear that the suit prosecuted under the Act was oppressive and brought to secure an inequitable advantage from misuse of the Act's provisions for choice of venue. Such a qualification has been implied, but only to the extent that Congress conferred the privilege of bringing suits under the Act in state courts. In *Ex Parte Crandall*, 53 F.2d 969, the Circuit Court of Appeals for the Seventh Circuit indicated that the qualification existed and held that habeas corpus should not be granted to an Indiana citizen who violated an injunction of an Indiana court forbidding her to litigate an action brought under the Federal Employers' Liability Act in a state court of Missouri. In a more recent case, the Circuit Court for the Seventh Circuit has held, first, that a federal district court which had jurisdiction of an action under the Federal Employers' Liability Act need pay no heed to an injunction issued by a state court forbidding prosecution of the action, and, second, that the state court had no power to issue an injunction against a person to forbid him from bringing an action under the Liability Act in a federal court given jurisdiction by the terms of the Act, hence that even if the state court's injunction issued before the plaintiff instituted his action in the federal court, the injunction was invalid. *Rader v. B. & O. R. Co.*, 108 F.2d 980, 985-6. In that case the plaintiff, a citizen of Ohio who was injured in Ohio, originally brought suit in a federal district court in Ohio, but dismissed his action there and filed suit on the same cause of action in a state court in Illinois. The railroad instituted an action in a state court in Ohio and enjoined plaintiff from prosecuting the Illinois action. Thereupon plaintiff dismissed the action in the Illinois state court and on the same day filed suit on the same cause of action in a federal district court in Illinois. The Ohio state court enjoined this action upon supplemental bill. The Circuit Court for the Seventh Circuit held that the Ohio state

court injunction was not binding upon the plaintiff as above stated, and quoted authorities which reached this result, or stated principles from which the result would follow. From *Southern R. Co. v. Cochran*, 6 Cir., 56 F.2d 1019, 1020, it quoted,

"Jurisdiction is here asserted by a court of the United States under the mandate of a federal statute. It must be borne in mind that Congress has the power to regulate interstate commerce. The states have no such power. If the effect of a federal statute conferring jurisdiction upon a federal court is to place a burden upon interstate commerce, the power for that purpose exists, and the remedy is legislative and not judicial. * * *

From *McConnell v. Thompson*, 213 Ind. 16, 8 N.E.2d 986, 113 A.L.R. 1429, it quoted,

"* * * Consequently, when a state court, as in the instant case, attempts to enjoin a litigant from prosecuting his cause of action, arising under the Federal Employers' Liability Act, in a district court of the district in which the defendant is doing business, such action, if effective, destroys a federal right of the litigant and obstructs the performance of a duty imposed by act of Congress upon a district court of the United States. This is beyond the power of a state court."

To the same effect the court cited *Chic., M. & St. P. R. Co. v. Schendel*, 8 Cir., 292 F. 326, 330; *Ches. & O. R. Co. v. Vigor*, 6 Cir., 90 F.2d 7; 2 Roberts, Federal Liabilities of Carriers, (2d Ed.) Sec. 962; *Taylor v. Atchison, T. & S. F. R. Co.*, 292 Ill. App. 457, 11 N.E.2d 610.

In *Ches., & O. R. Co. v. Vigor*, *supra*, the Circuit Court of Appeals for the Sixth Circuit held that the railroad was not entitled to an injunction forbidding an Ohio resident from prosecuting an action under the Employers' Liability Act brought in the United States District Court for the Northern District of Indiana, although the accident occurred in Ohio and the railroad had its books and witnesses in Ohio. The Circuit Court held that defending the action

in Indiana was not made an inequitable burden upon the railroad by plaintiff's conduct in instituting suit there, but that the burden was one imposed by Congress when it provided that suits under the Act might be brought in any jurisdiction where the company was doing business. The court said, p. 8:

"The plaintiff (railroad) it is true, may suffer some inconvenience or be put to extra expense in producing witnesses to testify in the Indiana case, but it is to be presumed that Congress considered such probable inconvenience and expense in placing jurisdiction of the action in any district in which the defendant should be doing business at the time."

The railroad claimed Vigor was using the right to sue in foreign jurisdictions inequitably and that this appeared from the fact that a suit under the Act had been instituted by him in Kentucky, which suit was subsequently dismissed. The court held, however, that the Kentucky suit was brought and dismissed as a matter of right. Although the Circuit Court decided the case on the merits without discussing jurisdictional questions, the construction which it gave to the Employers' Liability Act was one which nearly forecloses the possibility that there are any equitable considerations which can justify even a federal court in enjoining suits brought under the act in jurisdictions distant from the plaintiff's domicile. The case lends some inferential support to Mrs. Painter's general proposition that 45 U.S.C.A. 56, which entitles a plaintiff to sue in a jurisdiction where the railroad does business, is not intended to be subject to an implied qualification that a court of plaintiff's domicile is free to enjoin the plaintiff from bringing suit in the jurisdiction because doing so would burden the railroad and hence confer inequitable advantage on the plaintiff. The reasoning of the case, though not the holding, might support the proposition that the act confers upon a plaintiff an absolute right to sue wherever the railroad is doing business, and that this right is subject to no equitable limitations. But this issue is one we need not decide. Our present consideration is

directed to a narrower point, whether a state court can issue process which will defeat a federal court in its exercise of jurisdiction over a case properly before it, or whether, short of actual issue of process, the state court can oust federal jurisdiction of an action in personam for a money judgment by merely rendering a judgment to which the federal court must give full faith and credit. If a state court can do neither, we see no reason to impute to Congress an intention to modify 45 U.S.C.A. 56 by implied but unmentioned qualifications.

In *Chic. M. & St. P. Ry. Co. v. Schendel*, 292 F. 326, this court affirmed a decree enjoining a railroad from enforcing a decree issued by a state court in Iowa. The Iowa court, acting under the authority of a state statute directed a "just ambulance chasing, had enjoined Schendel, the plaintiff in a Federal Employers' Liability action, from trying his suit against the railroad in a certain Minnesota state court or in any other court except a certain federal district court in Iowa or a certain state court in Iowa. Witnesses to the accident, which was the basis of Schendel's cause of action, were enjoined from testifying in any other courts than those excepted in the Iowa injunction; and when Schendel filed suit in the federal district court in Minnesota, that court was unable to try the action since witnesses refused to testify. Schendel instituted ancillary equity proceedings in the Minnesota district court for the purpose of making the jurisdiction of that court effective, and that court issued its decree that the railroad be enjoined from enforcing the Iowa injunction, and further, that it proceed to dismiss the Iowa injunction action. The case came to this court upon appeal from the decree of the Minnesota district court, and we affirmed. We quoted the Iowa statute and cited the case in which the Iowa supreme court had decided that the statute authorized issue of injunction against an Iowa citizen who was injured within the state—or his estate, if death resulted from the injury—to prevent such a citizen from litigating his claim for damages in a court outside the state. We quoted the federal statute, 45 U.S.C.A. 56, which gave a right to a

plaintiff suing under the Federal Employers' Liability Act to bring his action in a federal district where the defendant was doing business. We held that a state could not in pursuance of its public policy validly enact a statute which would deprive the federal courts of jurisdiction conferred by Congress. We cited numerous cases declaring general principles considered applicable: that a state could not deny access to federal courts as a condition to admitting corporations into the state, that states could not prohibit by statute transitory causes of action from being prosecuted in another state,⁽¹⁾ that federal courts exercise their jurisdiction pursuant to the supreme law of the land and "each state, by accepting the Constitution, has agreed that the courts of the United States may exert whatever judicial power can be constitutionally conferred upon them". To the specific power of federal and state institutions affected by the Federal Employers' Liability Act, we quoted statements of the United States Supreme Court to the effect that with respect to "the field of the employer's liability to employees in interstate transportation by rail, all state laws upon the subject are superseded". We held that the state had no power to confer or take away jurisdiction from a federal court; that the Iowa statute as construed by the Iowa supreme court was unconstitutional and the order of the Iowa district court was void. We held that the order could not be sustained on the ground that it was made within general equity powers of the Iowa court, that the terms of the injunction issued revealed that it was not based on equitable considerations of hardship and oppression, but upon the statute which declared the public policy of the state. We dismissed from discussion the equity cases cited on the ground that "They do not apply to this situation". We held that the order of the Iowa district court "in so far as it affects the proceedings in the federal court of the United States for the District of Minnesota" was void, and it followed that the order was not entitled to full faith and credit.

(1) See and compare case holding conversely, that states may not discriminate against federal laws and close their courts to Federal Employers' Liability actions. *McKnett v. St. L. & S. F. Ry. Co.*, 292 U.S. 230.

The railroad company, appellant in the *Schendel case*, argued that the injunction issued against it offended against Sec. 265 of the Judicial Code, in that it illegally stayed proceedings in a state court. Answering this contention we relied upon the holding of the United States Supreme Court in *Kline v. Construction Co.*, 260 U.S. 226, where that court declared that Sec. 265 of the Judicial Code must be construed in connection with Sec. 262 of the Code,

“* * * The Supreme Court, the Circuit Courts of Appeals, and the District Courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law.”

We then quoted from the opinion the effect of the power conferred (260 U.S. 229):

“It is settled that where a federal court has first acquired jurisdiction of the subject-matter of a cause, it may enjoin the parties from proceeding in a state court of concurrent jurisdiction where the effect of the action would be to defeat or impair the jurisdiction of the federal court.”

We then quoted the opinion wherein it laid down the rule to govern mutual interference of state and federal courts, (260 U.S. 235):

“The rank and authority of the courts are equal, but both courts cannot possess or control the same thing at the same time, and any attempt to do so would result in unseemly conflict. The rule, therefore, that the court first acquiring jurisdiction shall proceed without interference from a court of the other jurisdiction is a rule of right and of law based upon necessity, and where the necessity, actual or potential, does not exist, the rule does not apply. Since that necessity does exist in actions in rem, and does not exist in actions in personam, involving a question of personal liability only, the rule applies in the former but does not apply in the latter.”

Quoting also from *French, Trustee, v. Hay*, 22 Wall. 231, 253, and from *Riggs v. Johnson County*, 73 U.S. 166, we applied the statement in the *Kline case*. We found that the federal court had jurisdiction of the claim Schendel asserted against the railroad under the Employers' Liability Act. We found that the action instituted for injunction by the railroad in the Iowa court was not an action in personam which involved a question of personal liability only, but that it was an action which prevented the federal court from proceeding without interference. Although the action in the federal court was not an action in rem, the court was nevertheless entitled to proceed with it without interference of the Iowa court, and Sec. 262 of the Judicial Code became operative to empower the federal court to terminate the interference. Holding that the ancillary proceedings by which Schendel raised the question were proper,⁽²⁾ we declared that the Iowa order, "in so far as it affects the proceedings in the federal court" was void, and affirmed the decree and order appealed from.

The railway appellant herein urges us to distinguish or reverse the *Schendel case*. It urges us to distinguish the case upon the ground that there we held the Iowa decree was not granted upon grounds of oppression and hardship under the Iowa court's equity powers. Although this is true, we said (p. 334): "The mere hardship of defending a suit brought elsewhere than in the district where plaintiff or witnesses reside is hardly sufficient to warrant the interference of equity. If so, jurisdiction given by Congress could be limited in practically every case."⁽³⁾ This statement points to the difficulties inherent in the problem before us, as well as illustrates our holding that no equity based on hardship was involved in that case.

To sanction the ousting of federal jurisdiction by state courts of domicile conflicts with the obligation the federal

(2) See *Dugas v. American Surety Co.*, 300 U.S. 414; *Local Loan Co. v. Hunt*, 292 U.S. 234.

(3) In *Denver & Rio Grande v. Terte*, 284 U.S. 284, loc. cit., 287-8, the court said, in holding a state court had no jurisdiction of a Federal Employers' Liability action, "Further, as a practical matter, courts could not undertake to ascertain in advance of trial the number and importance of probable witnesses within and without the State and retain or refuse jurisdiction according to the relative inconvenience of the parties."

courts are under to exercise jurisdiction conferred upon them. It is not a discretionary matter, but an obligation and a duty. They do not proceed under the Employers' Liability Act in their discretion, but by positive requirement.⁽⁴⁾ *Wood v. Delaware & H. R. Corp.*, 2 Cir., 63 F.2d 235; *Southern R. Co. v. Cochran*, 6 Cir., 56 F.2d 1019; *Schendel v. McGee*, 300 F. 273 (where we said, in a companion case to *Railroad v. Schendel*, previously discussed, "It being the law, it is a court's duty, where there is jurisdiction, to take and retain that jurisdiction and try the case.") It would create an anomalous situation in the law if the federal court could not refuse to take the case, but that the court of the domicile could none the less prevent it from exercising effective jurisdiction.

The principles announced in *Railroad v. Schendel*, *supra*, are controlling in the present case. The compelling ground of decision there was the necessity that federal courts be free to decide cases within their jurisdiction without interference from state courts. The state and federal system of concurrent jurisdiction compels that courts of concurrent jurisdiction be left free to decide such in personam actions for money judgment as may be before them. *Kline v. Construction Company*, 260 U.S. 226; *Moran v. Sturges*, 154 U.S. 256; *Central National Bank v. Stevens*, 169 U.S. 432; Federal and State Court Interference, 43 Harv. L.R. 345, 348-9, 372; Story's Equity Jurisprudence, Vol. 2, Sec. 900, (14th Ed.) Vol. 2, Sec. 1225, pp. 580-582. We think that the nature of the dual system compels the conclusion that a state court which assumes to enjoin such an action in a federal court does so in excess of its jurisdiction and renders a decree which is void in so far as it affects proceedings in the federal court. Such a void decree is not entitled to full faith and credit, and its enforcement may be enjoined.

In *Bryant v. Atlantic Coast Line R. Co.*, 92 F.2d 569, the Circuit Court of Appeals for the Second Circuit disagreed with the conclusions of this court in *Railroad v.*

(4) For a full and able discussion of problems in the field see Foster: The Place of Trial in Civil Actions, 43 Harv. L.R. 1217, 1239-48.

Schendel, supra, and held that a federal court which had taken jurisdiction of an action for damages under the Federal Employers' Liability Act could not enjoin enforcement of a decree issued by a state court to prevent the plaintiff from proceeding with trial of his cause in the federal court. The state court, there a court of Virginia, was held "obviously" to have jurisdiction, and it was said that in the court's view, *Kline v. Construction Company*, 260 U.S. 226, had been misconstrued in *Railroad v. Schendel, supra*. It appears to have been the view of the Second Circuit that since the state injunction suit was in personam and the federal damage suit and the proceedings ancillary thereto were also in personam, they were suits that could proceed simultaneously and *pari passu*. The foregoing discussion of *Railroad v. Schendel* indicates our points of disagreement. We do not think that a state court has such a broad concurrent jurisdiction with the federal court that it may decide whether the federal court is properly proceeding with a case which is within its legal jurisdiction. A state court could of course properly proceed with concurrent jurisdiction to adjudicate upon the merits the issues in plaintiff's suit against the railroad. See *Southern Pac. Co. v. Klinge*, 10 Cir., 65 F.2d 85. Such an action is within the denomination of the Supreme Court in the *Kline case* as an "action in personam for a money judgment". But an action for injunction is not an in personam action of this nature, and interference by one court or the other with the trial of such actions is the very thing which the opinion in the *Kline case* seems intended to prevent. We think that the application of the *Kline case* to permit such interference would subvert its true intent and would defeat its intendment. The balance between Sections 262 and 265 of the Judicial Code lies at the point where one court interferes with the other. Neither state nor federal court has jurisdiction to enjoin the other except when one interferes with the province of the other, then the court interfered with has exclusive jurisdiction to prevent the interference.⁽⁵⁾ We consider this to be the

⁽⁵⁾ See *Continental Bank v. Rock Island Ry.*, 294 U.S. 648, 675-6; *Looney v. E. Texas Ry.*, 247 U.S. 214, 221.

effect of the code provisions as construed by the Supreme Court. It follows that the enforcement of the Tennessee injunction was properly enjoined by the court below.

If we correctly interpret the scope of federal and state court concurrent jurisdiction, the case of *Ex Parte Green*, 286 U.S. 437, is in point. In *Langnes v. Green*, 282 U.S. 531, the Supreme Court had held that an action for damages instituted by Green against Langnes in the state court of Washington should be allowed to proceed simultaneously with an action instituted by Langnes against Green in a federal court. Green's action was a common law action to recover damages sustained while he was employed on a vessel belonging to Langnes; Langnes' action was based on a federal statute limiting employer's liability. The Supreme Court held that while Green's common law action should be allowed to continue as long as he raised no question of limited liability in the action so as to bring his case within admiralty jurisdiction. Green did put in issue the question of limited liability in the state court action and the federal court enjoined further prosecution of that action. Green appealed to the Supreme Court of the United States. That court held the injunction proper,—though it extended the time which the decree of injunction allowed to Green to withdraw the issue of limited liability from the state court suit. We are not in the present case concerned with questions of admiralty jurisdiction, but nevertheless cite this case as an instance where a federal court may enjoin a state court which is exceeding its jurisdiction by encroaching upon the rightful powers of a federal court.

In *Bradford Elec. Light Co. v. Clapper*, 286 U.S. 145, the Supreme Court of the United States held that a federal district court in New Hampshire must give full faith and credit to a Vermont statute which was not contrary to the public policy of the State of New Hampshire. (See *Pacific Ins. Co. v. Commission*, 306 U.S. 493, 503). The action for tort brought by Clapper was removed from the state court in New Hampshire to the federal court by the Light Company and the company contended that full faith

and credit must be given to the law of Vermont where all rights under tort claims were taken away by provision of its Compensation Act. Clapper's intestate had been killed while in New Hampshire where the Compensation Act permitted an administrator to sue in tort or claim compensation at his option. But Clapper's intestate was a citizen of Vermont, employed under its laws, and in New Hampshire at the time of the injury pursuant to such employment. The Supreme Court held that a court in New Hampshire must give full faith and credit to the Vermont Compensation Act and could not grant recovery in an action in tort brought contrary to its provisions. At page 159, the court said,

"A Vermont court could have enjoined Leon Clapper from suing the Company in New Hampshire, to recover damages for an injury suffered there, just as it would have denied him the right to recover such damages in Vermont. Compare *Cole v. Cunningham*, 133 U.S. 107 (where a Massachusetts court enjoined one of its citizens from suing in New York contrary to the furtherance of a Massachusetts insolvency proceeding distributing the assets of another Massachusetts citizen*); *Reynolds v. Allen*, 136 U.S. 348, 353 (where one not a citizen of the state was held not bound by the state law insolvency transfer as it applied to property in Louisiana, a state which did not have a policy like that of Massachusetts.*)"

This statement, taken alone, might appear to sustain the control of the court of the state of plaintiff's domicile, but such is not its effect when the situation is considered as a whole. The Supreme Court states that the injunction might issue to enforce the full faith and credit which must be given to the Vermont Act. Domicile figures merely as a restriction on a Vermont court's power. The injunction would be allowed to issue because plaintiff Clapper was seeking to avoid the effect of the law which governed and determined his employment and his rights on account of injuries received in its course. In the present case it

*digest supplied.

is the railroad which seeks to avoid and set at naught a right incident to employment conferred by the federal act. Although the federal act confers upon Mrs. Painter a right to sue in a federal court in the Eastern District of Missouri, where the railroad is doing business, the railroad seeks to nullify that right by bringing a separate action in another jurisdiction. *Ches. & Ohio v. Vigor*, 6 Cir., 90 F.2d 7. Both the railroad and Mrs. Painter are, of course, citizens of the United States, and United States courts should be able to require state courts to accord federal laws the equivalent of full faith and credit. The fact that one right may be substantive and the other right procedural should be deemed immaterial.

It is argued for the railroad that even if the action of the Tennessee court be held invalid, nevertheless the federal injunction against its enforcement should not issue. But as a practical matter, the plaintiff, Mrs. Painter, stands enjoined by the Tennessee court, and if she proceeds with her case she incurs pains and penalties for contempt. Upon decision by the federal court that the Tennessee injunction is invalid, the railroad must be prevented from wrongfully harassing Mrs. Painter and the injunction was proper to that end.

Affirmed.

[fol. 97]

(Judgment.)

United States Circuit Court of Appeals,
Eighth Circuit.

November Term, 1940.

Friday, January 10, 1941.

Southern Railway Company, a corporation, Appellant,
No. 11,794. vs.

Ethel Painter, Administratrix of the Estate of Geoffrey L.
Painter, deceased.

Appeal from the District Court of the United States for
the Eastern District of Missouri.

This Cause came on to be heard on the transcript of
the record from the District Court of the United States

for the Eastern District of Missouri, and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court, that the order of the said District Court appealed from in this cause be, and the same is hereby, affirmed with costs; and that Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, deceased, have and recover against the Southern Railway Company, a corporation, the sum of Twenty Dollars for her costs herein and have execution therefor.

January 10, 1941.

[fol. 98] (Motion of Appellant for Order Staying Issuance of Mandate.)

To The Honorable Judges of the United States Circuit Court of Appeals for the Eighth Circuit:

Now comes Southern Railway Company, a corporation, Appellant in above entitled cause, by E. C. Hartman, Bruce A. Campbell and Norman J. Gundlach, its attorneys, and respectfully moves that an order be entered by this Honorable Court, granting a stay of mandate in the above entitled cause until and including February 24, 1941, pending application to the Supreme Court of the United States for a writ of certiorari. And in support of this motion Appellant says:

1. That on January 10, 1941, this Honorable Court entered an order, affirming the judgment of the District Court of the United States for the Eastern District of Missouri in said cause.

2. That under Rule 18 of this Honorable Court the time for filing a petition for rehearing in this Court in said cause expires on January 25, 1941. Appellant does not intend to file a petition for rehearing for the reason that it does not feel that it can justly file such a petition under paragraph 3 of Rule 18 of this Court, limiting such a petition to calling attention to material matters of law or fact inadvertently overlooked by the Court, as shown by its opinion. Counsel for appellant are of the opinion [fol. 99] that the Court has not overlooked any material

matters of law or fact in the opinion in this cause, and therefore, counsel do not feel that under said Rule 18 they are justified under said rule in filing such a petition. This Court did pass upon every material matter of law and fact raised by Appellant upon said appeal, and a petition for rehearing would merely be a reargument of the issues determined by the opinion.

3. Appellant intends to file in the Supreme Court of the United States an application for a writ of certiorari to review the order, decision and opinion of this Court in said cause, and intends to proceed with said application as expeditiously as possible, and to file the same as soon as the transcript of record and printed copies thereof can be obtained from the Clerk of this Court, and the application for writ of certiorari and supporting brief prepared and printed. Counsel for appellant are of the opinion that if this Court shall grant a stay of mandate in said cause until and including February 24, 1941, which is a date thirty days after the time for filing petition for rehearing expires, that it can within such time secure transcript of record and copies thereof, and prepare and have printed its application for writ of certiorari and supporting brief and file the same in the office of the Clerk of the Supreme Court of the United States.

4. Appellant further states that this motion is not made for delay, but solely for the purpose of seeking review of the decision, order and opinion of this Court by writ of certiorari, as aforesaid.

Appellant therefore prays that this Court shall enter an [fol. 100] order, granting a stay of mandate in said cause to and including the 24th day of February, 1941, pending application to the Supreme Court of the United States for a writ of certiorari in this cause; and that the Court will further enter an order that if on or before February 24, 1941, there is filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court of the United States that the certiorari petition, record and brief have been filed in his office, that then and in such case such stay of mandate shall continue until final disposition of said cause by the Supreme Court of the United States.

Appellant attaches hereto the affidavit of Bruce A. Campbell, one of its counsel, in support of this motion.

All of which is respectfully submitted and prayed.

**SOUTHERN RAILWAY
COMPANY,**

a corporation, Appellant in above
entitled cause,

By E. C. Hartman,
Business Address: 506 Olive Street,
St. Louis, Missouri.

BRUCE A. CAMPBELL,
NORMAN J. GUNDLACH,
Business Address: 606-618 First
Natl. Bank Building,
East St. Louis, Illinois.

Counsel for Appellant.

[fol. 101] State of Illinois,

County of St. Clair.—ss.:

Bruce A. Campbell, being first duly sworn, upon his oath deposes and says that he is one of the counsel for Appellant in the cause mentioned in the foregoing motion; that he prepared and has read over the above and foregoing motion, and that the matters and things therein contained are true and correct as therein stated.

Further this affiant saith not.

BRUCE A. CAMPBELL.

Subscribed and sworn to before me this 17th day of January, A. D. 1941.

CLARA HELMS,
(Notarial Seal) Notary Public.

My Commission expires May 11, 1944.

Service of copy of the above motion, together with copy of proposed order submitted therewith, is acknowledged this 18th day of January, A. D. 1941.

MARK D. EAGLETON,
ROBERTS P. ELAM,
Attorneys for Ethel Painter,
Admr. of the Estate of
Geoffrey L. Painter, Deceased.

(Endorsed): Filed in U. S. Circuit Court of Appeals,
Jan. 18, 1941.

[fol. 102] (Order Staying Issuance of Mandate.)

November Term, 1940.

Tuesday, January 21, 1941.

On Consideration of the motion of appellant for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

January 21, 1941.

[fol. 103] (Clerk's Certificate.)

United States Circuit Court of Appeals,
Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Missouri as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein the Southern Railway Company, a Corporation, was Appellant, and Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, Deceased, was

Appellee, No. 11794, as full, true and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-seventh day of January, A. D. 1941.

(Seal)

E. E. KOCH,

Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

[fol. 104] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 26, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted, and the case is assigned for argument immediately following No. 678.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4854)

FILE COPY

IN THE
Supreme Court of the United States

OCTOBER TERM, 1940.

No.  21

SOUTHERN RAILWAY COMPANY, *Petitioner*,

v.

ETHEL PAINTER, ADMINISTRATRIX OF THE ESTATE OF
GEOFFREY L. PAINTER, DECEASED, *Respondent*.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUP-
PORT THEREOF.**

✓ SIDNEY S. ALDERMAN,

✓ H. O'B. COOPER,

✓ RUDOLPH J. KRAMER,

✓ BRUCE A. CAMPBELL,

✓ ERVIN C. HARTMAN,

Attorneys for Petitioner,

Southern Railway Company.

S. R. PRINCE,

Of Counsel.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1940.

No.

SOUTHERN RAILWAY COMPANY, *Petitioner*,

v.

ETHEL PAINTER, ADMINISTRATRIX OF THE ESTATE OF
GEOFFREY L. PAINTER, DECEASED, *Respondent*.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUP-
PORT THEREOF.**

PETITION.

Petitioner prays this Court to review on writ of certiorari a judgment of the United States Circuit Court of Appeals for the Eighth Circuit, in the case there entitled *Southern Railway Company, a Corporation, Appellant, v. Ethel Painter, Administratrix of Geoffrey L. Painter, Deceased, Appellee*, No. 11,794, rendered on the 10th day of January, 1941, (R. 97) and based upon a written opinion by that court rendered on the same date (R. 78-94), which judgment af-

firmed an injunctional order issued by the District Court of the United States for the Eastern District of Missouri, Eastern Division (in an action for damages for wrongful death there pending under the Federal Employers' Liability Act), restraining petitioner from enforcing an injunction against respondent issued at petitioner's instance by a state court of Tennessee, from which state court injunction respondent did not appeal, and mandatorily commanding and directing petitioner to dismiss and set at naught its said suit in the Tennessee court.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

On August 31, 1939, respondent, a resident of Knox County, Tennessee, and administratrix of her deceased husband's estate by appointment of the Probate Court of that County and State, filed an action at law against petitioner, in the United States District Court for the Eastern District of Missouri, Eastern Division, to recover damages under the Federal Employers' Liability Act (35 Stat. 65-66, 45 U. S. C. 51-59) for the alleged wrongful death of her intestate on February 3, 1939, at Bulls Gap, Madison County, North Carolina, while he was employed by petitioner as a fireman on an interstate run between Tennessee and North Carolina. (R. 2, 3.)

To an amended complaint filed on March 8, 1940 (R. 7), petitioner answered (R. 10), raising issues as to negligence, contributory negligence and assumption of risk.

Thereafter, on May 27, 1940, the Chancery Court of Knox County, Tennessee, in a suit brought by petitioner against respondent (R. 26), having therein jurisdiction of the person of respondent, both individually and in her representative capacity, by personal service of process upon her (R. 19), enjoined respondent under the laws of Tennessee, individually and as a Tennessee administratrix, from further prosecuting and maintaining her said action against petitioner in the United States District Court for the Eastern District of Missouri, and from instituting any other suit on

her alleged cause of action, except in the State courts of either Knox County, Tennessee, or Madison County, North Carolina, or in the United States District Courts for either the Eastern District of Tennessee at Knoxville or the Western District of North Carolina at Asheville. (R. 33.)

The Tennessee court based its injunction on general grounds of equity, that for respondent, a resident and probate court appointee of Tennessee, to avoid bringing her Liability Act suit in either the state or federal courts in Tennessee, the state of residence, or in either the state or federal courts of North Carolina, where the cause of action arose, but to go to the distant jurisdiction of Missouri and there sue petitioner in the federal district court, when all the witnesses lived in western North Carolina or eastern Tennessee, would be inequitable, harassing and oppressive, and would work an unjust and inequitable hardship on petitioner. (R. 26-36.)

Respondent did not appeal from the injunction issued by the Tennessee court. Instead, she thereupon, on June 21, 1940, filed, in her action at law pending in the United States District Court for the Eastern District of Missouri, a supplemental equitable complaint, setting out the proceedings had and the judgment rendered against her in the equity suit in the Tennessee court, and thereupon moved for a temporary injunction against petitioner. (R. 14-37.)

On July 10, 1940, upon hearing solely upon respondent's said sworn supplemental complaint and motion for temporary injunction, the District Court of the United States for the Eastern District of Missouri, Eastern Division, issued what it designated as a "Writ of Preliminary Injunction," but which, without limitation of time, broadly enjoined petitioner from interfering in any way with the liberty of respondent in prosecuting her said action in that court, from interfering in any way with that court's jurisdiction in the case, from further prosecuting petitioner's said equity suit in the Chancery Court of Knox County, Tennessee, and from taking any except dismissal proceedings therein. (R. 51-54, 73-76.)

This injunction order went even further and mandatorily and unconditionally commanded and directed petitioner forthwith to dismiss and set at naught its chancery suit in the Tennessee court. (R. 53, 75.) In its terms, this part of the injunction was final, not preliminary or interlocutory, in effect.

From the said injunction petitioner appealed, with supersedeas, under Section 129 of the Judicial Code as amended, 28 U. S. C. 227, to the United States Circuit Court of Appeals for the Eighth Circuit. (R. 1, 55.)

On January 10, 1941, that court affirmed the decree of injunction issued by the District Court. (R. 94.) The opinion of the Circuit Court of Appeals is not yet reported but appears in the record, pages 78-94. In the opinion, the court recognized that it was dealing with important questions of conflict between state and federal courts and it recognized that its decision was squarely in conflict with the decision of the Circuit Court of Appeals for the Second Circuit, in a case on all fours with the present case, *Bryant v. Atlantic Coast Line R. Co.*, 92 F. (2d) 569. (R. 91.)

The Circuit Court of Appeals held that the Tennessee court was without right, power, authority or jurisdiction to enjoin respondent from prosecuting suit for damages in the United States District Court for the Eastern District of Missouri; that the decree of the Tennessee court was not binding on respondent, and that federal courts are not required by the Constitution of the United States to give full faith and credit to such a decree; that the District Court had the right, power, authority and jurisdiction to issue its injunction restraining and enjoining petitioner from prosecuting or maintaining its chancery suit in Knox County, Tennessee, and directing petitioner to dismiss that suit; that the District Court was not deprived of power and jurisdiction to issue its injunction by Section 265 of the Judicial Code (28 U. S. C. 379), which expressly prohibits federal courts from enjoining proceedings in state courts, except in bankruptcy matters; and that the decree of the Tennessee

court was not merely a personal decree against respondent, restraining her personally from doing an inequitable, oppressive and harassing act, but that the decree actually and legally enjoined proceedings in the federal court.

JURISDICTION.

The date of the judgment sought to be reviewed is January 10, 1941.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, 28 U. S. C. 347.

THE QUESTIONS PRESENTED.

1. Whether the Chancery Court of Knox County, Tennessee, having jurisdiction of the person of respondent, had the right, power, authority and jurisdiction, in an equity suit brought by petitioner, to enjoin respondent, a resident of Knox County, Tennessee, and acting as administratrix by appointment of the Knox County Probate Court, from prosecuting an action at law to recover damages under the Federal Employers' Liability Act for the death of her deceased husband in the District Court of the United States for the Eastern District of Missouri, the fatal accident having happened in North Carolina, and both the respondent and her intestate being residents of Knox County, Tennessee.

2. Whether the decree of the Chancery Court of Knox County, Tennessee, is binding upon respondent, both individually and in her representative capacity, until set aside or reversed; and whether the District Court was required to give full faith and credit to such decree under Article IV, Sec. 1, of the Constitution of the United States.

3. Whether the District Court, on a supplemental equitable complaint filed in an action at law there under the Federal Employers' Liability Act, had the right, power, authority and jurisdiction to issue an injunction against peti-

tioner, restraining and enjoining it from prosecuting or maintaining its chancery suit in Knox County, Tennessee, and ordering and directing petitioner to dismiss its said chancery suit.

4. Whether Section 265 of the Judicial Code (28 U. S. C. 379), as construed by this Court, deprived the District Court of the right, power, authority and jurisdiction to issue its interlocutory injunction. Section 265 provides:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

5. Whether the Tennessee decree actually and legally enjoined proceedings in the federal court, or whether its decree was a mere personal decree against respondent, issued by the Tennessee court against one of its own citizens, restraining her personally from doing an inequitable, oppressive and harassing act.

REASONS RELIED ON FOR GRANTING THE WRIT.

1. The decision and opinion of the Circuit Court of Appeals for the Eighth Circuit in this case is in direct conflict with the decision of the Circuit Court of Appeals for the Second Circuit on the same matter in *Bryant v. Atlantic Coast Line R. Co.*, 92 F. (2d) 569, a decision by L. Hand, Swan, and Augustus N. Hand, Circuit Judges, Judge L. Hand writing the opinion.

In the *Bryant Case*, Bryant was a resident of Virginia injured in Virginia while employed by the railroad in interstate commerce. The witnesses to the accident lived in Virginia. Instead of bringing his suit in Virginia, either in state or federal courts, he sued the railroad, under the Federal Employers' Liability Act, in the District Court of the United States for the Southern District of New York, where the railroad was also doing business. The railroad then

sued Bryant in equity in the Virginia state court and secured injunction restraining him from prosecuting further his action in the federal District Court in New York. Bryant then applied to the District Court in New York for injunction restraining the railroad from prosecuting further its Virginia injunction proceeding. The District Court denied the injunction and on Bryant's appeal the Court of Appeals for the Second Circuit affirmed, not on any question of discretion in denying an interlocutory injunction, but on the fundamental ground that the District Court in New York was without power, in view of Section 265 of the Judicial Code, to restrain the Atlantic Coast Line from prosecuting its equity suit in the Virginia courts.

That case is on all fours with ours. The decisions are diametrically in conflict on the important questions of conflict between state and federal courts. The opinion of the Court of Appeals for the Eighth Circuit below distinctly recognized that conflict. (R. 91.)

The decision below, here sought to be reviewed, based itself largely on the decision by the same court in the earlier case of *Chicago, M. & St. P. Ry. Co. v. Schendel*, 292 Fed. 326, and upon the construction which it had put in the *Schendel Case* on this Court's decision in *Kline v. Burke Const. Co.*, 260 U. S. 226.

In the *Bryant Case* the Court of Appeals for the Second Circuit considered the *Schendel Case*, recognized the conflict between that case and its holding, but held that the Court of Appeals for the Eighth Circuit had in the *Schendel Case* misapplied this Court's decision in *Kline v. Burke Const. Co.*

The court below, in the decision here sought to be reviewed (like the Court of Appeals for the Second Circuit in the *Bryant Case*) did not deal with any question of discretion or abuse of discretion by the District Court in granting interlocutory injunction. It grappled with and decided the fundamental questions of power and of conflict between federal and state courts. It held that the Tennessee court

was without power to entertain the equity suit there and that the District Court in Missouri had the power, in spite of Section 265 of the Judicial Code, to enjoin petitioner from farther prosecuting its equity suit in the Tennessee court and to command petitioner to dismiss that suit.

Other decisions in other circuit and district courts are likewise in conflict on the questions presented. *Ex Parte Crandall* (C. C. A. 7th), 53 F. (2d) 969, is in harmony with the decision by the Court of Appeals for the Second Circuit in the *Bryant Case*. Likewise in harmony with the *Bryant Case* is *Baltimore & Ohio R. Co. v. Bole* (D. C., W. Va.), 31 F. Supp. 221. The cases of *Southern Railway Co. v. Cochran* (C. C. A. 6th), 56 F. (2d) 1019; *Chesapeake & Ohio Ry. Co. v. Vigor* (C. C. A. 6th), 90 F. (2d) 7; *Rader v. Baltimore & Ohio R. Co.* (C. C. A. 7th), 108 F. (2d) 980, tend to support the decision of the court below.

2. The court below has decided important questions of federal law which have not been, but should be, settled by this Court.

3. The court below has decided said important federal questions in a way probably in conflict with applicable decisions of this Court, particularly *Kline v. Burke Const. Co.*, 260 U. S. 226, and certainly in conflict with the construction put on that case by the Court of Appeals for the Second Circuit in the *Bryant Case*.

4. The questions presented are grave questions of public importance involving conflict of jurisdiction between state and federal courts and, it is submitted, the decision below is in conflict with the modern trend of decision of this Court which is to leave the state courts free from interference by the federal courts in the determination of questions of general law or equity.

5. The court below has so far departed from the accepted and usual course of judicial proceedings, and so far sanc-

tioned such a departure by the District Court below, as to call for an exercise of this Court's power of supervision.

Wherefore, it is respectfully submitted that this petition for writ of certiorari should be granted.

SOUTHERN RAILWAY COMPANY,
Petitioner.

By SIDNEY S. ALDERMAN,
H. O'B. COOPER,
RUDOLPH J. KRAMER,
BRUCE A. CAMPBELL,
ERVIN C. HARTMAN,
Attorneys for Petitioner.

S. R. PRINCE,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No.

SOUTHERN RAILWAY COMPANY, *Petitioner*,

v.

ETHEL PAINTER, ADMINISTRATRIX OF THE ESTATE OF
GEOFFREY L. PAINTER, DECEASED, *Respondent*.

BRIEF IN SUPPORT OF PETITION.

OPINIONS BELOW.

The Trial Judge in the District Court filed no opinion. He made findings of fact and stated conclusions of law which follow the allegations of the supplemental complaint. (R. 42-49.) The opinion of the Circuit Court of Appeals below is not yet reported. It appears in the record, pages 78 to 94.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on January 10, 1941. (R. 94.) The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, 28 U. S. C. 347.

STATEMENT AND QUESTIONS PRESENTED.

The statement of the matter involved and the questions presented are set out in the petition.

SPECIFICATION OF ERRORS.

The specification of points relied upon on the appeal to the Court of Appeals below, upon which the questions presented in the foregoing petition arise, will be found on pages 67 to 71 of the record.

ARGUMENT.

If the writ is granted petitioner expects to file a brief on the merits presenting all the reasons and authorities for its assertion that the decision below is erroneous and that the conflicting decision of the Circuit Court of Appeals for the Second Circuit in the *Bryant Case*, *supra*, is correct. The present brief is addressed only to showing that the case is a proper one for exercise of the discretion to grant the writ of certiorari.

I.

The Conflict Between Circuit Courts of Appeals.

As stated in the petition, the court below, in its opinion (R. 86-90), rested its decision heavily on its previous holding in *Chicago, M. & St. P. Ry. Co. v. Schendel*, 292 Fed. 326, and on the construction which it had put in the *Schendel Case* on this Court's decision in *Kline v. Burke Const. Co.*, 260 U. S. 226.

Of the holding by the Court of Appeals for the Eighth Circuit in the *Schendel Case*, the Court of Appeals for the Second Circuit, in *Bryant v. Atlantic Coast Line R. Co.*, 92 F. (2d) 569, 571, said:

"Nor can we agree with *Chicago, M. & St. Paul Ry. Co. v. Schendel*, 292 F. 326 (C. C. A. 8), where the facts were on all fours with those at bar. The court's theory there was that, as the federal court had first acquired

'jurisdiction of the subject-matter of the cause of action' (292 F. 326, at pages 332-334), it might protect that jurisdiction. In so holding the court assumed to follow *Kline v. Burke Construction Company*, 260 U. S. 226, 43 S. Ct. 79, 67 L. Ed. 226, 24 A. L. R. 1077, but with great deference it does not seem to us that it did so. An action in personam is indeed in some sense a 'subject-matter' before the court where it is pending; conceivably its pendency should stay a later action in the court of another state, just as it often does—when both courts are of the same state—under the plea of *lis alio pendens*. But the very purpose of *Kline v. Burke Construction Company*, *supra*, was to reaffirm—for it was an old doctrine—that two actions in personam upon the same cause of action may go on *pari passu* in different jurisdictions. That is in effect the situation at bar; because although of course the action and the suit are not upon the cause of action, the plaintiff's present demand to be free to prosecute the action involves exactly the same cause of suit as the Virginia suit. This would at once have been apparent had it been pressed by bill in equity, as, strictly speaking, it should have been; for the Virginia suit was based upon the notion that the plaintiff was using inequitably a legal right—the right of action under the Federal Employers' Liability Act—just as he might use a legal title to land inequitably. The plaintiff's motion strove to supersede that suit by drawing the same issue before the federal court; and both controversies were suits in personam which did not concern a *res* susceptible of custody. Both may therefore go along side by side."

In the opinion below the Court of Appeals for the Eighth Circuit recognized that its holding was in direct conflict with the holding of the Second Circuit in the *Bryant Case*. It said (R. 91):

"In *Bryant v. Atlantic Coast Line R. Co.*, 92 F. 2d 569, the Circuit Court of Appeals for the Second Circuit disagreed with the conclusions of this court in *Railroad v. Schendel*, *supra*, and held that a federal court which had taken jurisdiction of an action for damages under the Federal Employers' Liability Act could not enjoin enforcement of a decree issued by a state court

to prevent the plaintiff from proceeding with trial of his cause in the federal court. The state court, there a court of Virginia, was held 'obviously' to have jurisdiction, and it was said that in the court's view, *Kline v. Construction Company*, 260 U. S. 226, had been misconstrued in *Railroad v. Schendel*, *supra*. It appears to have been the view of the Second Circuit that since the state injunction suit was in personam and the federal damage suit and the proceedings ancillary thereto were also in personam, they were suits that could proceed simultaneously and *pari passu*. The foregoing discussion of *Railroad v. Schendel* indicates our points of disagreement."

The opinion of the court below (R. 89) shows that the decision by the Court of Appeals for the Second Circuit in the *Bryant Case* was pressed upon the court below and that it was urged to distinguish or overrule its decision in the *Schendel Case*. However, it squarely reaffirmed the *Schendel Case*, refused to distinguish it (although on the merits we shall undertake to show that it was distinguishable) and held that, "The principles announced in *Railroad v. Schendel*, *supra*, are controlling in the present case." (R. 90.)

The conflict between circuits is diametrical. Whether the *Bryant Case* be correct or the decision below correct, such a conflict ought to be resolved by decision here and is, alone, sufficient reason for granting the writ. Rule 38, par. 5(b), of this Court. See *Helvering v. Janney*, decided December 9, 1940, 85 L. ed. Adv. 127, 128; *United States v. Falcone*, decided December 9, 1940, 85 L. ed. Adv. 143, 144; *United States v. Stewart*, decided November 12, 1940, 85 L. ed. Adv. 25, 26; *J. E. Riley Invest. Co. v. Commissioner of Int. Rev.*, decided November 12, 1940, 85 L. ed. adv. 35.

II.

The Questions Presented are Important Questions of Federal Law and Grave Questions of Conflict Between State and Federal Court Jurisdictions.

The general equity jurisdiction of courts of a state to control its residents and, in a proper case, to enjoin such residents from maintaining legal proceedings in foreign jurisdictions, even though otherwise they have legal right to bring such proceedings, is generally recognized. *Cole v. Cunningham*, 133 U. S. 107, 124; *Roberts Federal Liabilities of Carriers*, 2d Ed., vol. 2, sec. 962, and cases cited; *High on Injunctions*, sec. 106; *Pomeroy on Equity Jurisdiction*, 3d Ed., vol. 4, sec. 1360, and vol. 6, sec. 670; *Louisville & N. R. Co. v. Ragan*, 172 Tenn. 593, 113 S. W. (2d) 743; *Ex Parte Crandall* (C. C. A. 7th), 53 F. (2d) 969, certiorari denied 285 U. S. 540; *Bryant v. Atlantic Coast Line R. Co.* (C. C. A. 2nd), 92 F. (2d) 569; *Baltimore & Ohio R. Co. v. Bole* (D. C., W. Va.), 31 F. Supp. 221.

This general equity jurisdiction of the state courts would seem to apply with special force where the resident so enjoined is a personal representative appointed under state law to administer an estate, and accountable to the probate courts of the state in administering such state office.

In many cases it has been held that the state court has such jurisdiction and power to restrain a personal representative, created by the state, from prosecuting in a foreign state court jurisdiction an action under the Federal Employers' Liability Act. An important question here raised is whether the Liability Act has the effect to take that jurisdiction away from the state courts, where the personal representative, instead of suing in a foreign state court, elects to prosecute the concurrent remedy of suing in a federal district court sitting in the foreign state. The court below held that the Liability Act has that effect. The Court of Appeals for the Second Circuit held in the *Bryant Case* that it had no such effect.

The Liability Act, 35 Stat. 65-66, 45 U. S. C. 51-59, contains no language which in terms purports to take this general equity jurisdiction away from the state courts. The Act creates a right of action for wrongful death which did not exist at common law, but it creates no federal officer to enforce that right. It vests the right in the "personal representative" of the deceased, who is an officer of state creation and presumably intended to be subject to state law in his action as such officer. It gives concurrent jurisdiction to the federal district courts and to the state courts over such actions, although it expresses an intention to prefer the state court jurisdiction to the federal court jurisdiction because it expressly provides that no action under the Act brought in a state court shall be removed to the federal courts.

The jurisdictional and venue section of the Act, as amended by the Act of August 11, 1939, 53 Stat. 1404, 45 U. S. C. 56, provides:

"No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.

"Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States, and no cause arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States."

The court below held that this section confers an absolute, federal legal right on respondent to sue petitioner under the Act in the federal district court in any district in which petitioner is doing business, regardless of distance from the state of respondent's residence and of the residence of the witnesses, and regardless of the inequity and hardship on

petitioner of such proceeding, and that it thereby took away from the courts of Tennessee the general equity jurisdiction to restrain a Tennessee administratrix which otherwise would plainly exist.

By reason of this provision of the Federal Employers' Liability Act, the court below held that the decree of the Tennessee court enjoining respondent, a Tennessee administratrix, from prosecuting her action in the federal District Court in Missouri was void and hence that it was not entitled to full faith and credit, and that the District Court had power to enjoin its enforcement. "We think," said the court below, "that the nature of the dual system compels the conclusion that a state court which assumes to enjoin such an action in a federal court does so in excess of its jurisdiction and renders a decree which is void in so far as it affects proceedings in the federal court. Such a void decree is not entitled to full faith and credit, and its enforcement may be enjoined:" (R. 90.)

In an exactly like case, the Circuit Court of Appeals for the Second Circuit, in the *Bryant Case*, held that the Virginia court injunction was valid and that the federal District Court in New York was without power to enjoin the Virginia injunction.

Not only did the court below give this effect to the Federal Employers' Liability Act. It decided an equally important federal question when it held that the District Court had the power to enjoin petitioner from proceeding to enforce the Tennessee injunction and to require it to dismiss the equity case in Tennessee, in spite of the inhibition of Section 265 of the Judicial Code, hereinbefore quoted in the petition p. 6. The Court of Appeals for the Second Circuit in the *Bryant Case* decided that question the other way.

Obviously the questions presented are important and present grave considerations as to conflict between state and federal courts.

In an analogous situation this Court, in the very recent case of *Beal v. Missouri Pacific R. R. Corp'n in Nebraska*, decided January 20, 1941, granted certiorari to review the

question of the equity jurisdiction of a federal district court to enjoin a criminal proceeding in the state courts, saying "the question being of public importance since it involves the appropriate relationship of the federal to the state courts." And in that case this Court reversed the Circuit Court of Appeals for the Eighth Circuit, which had affirmed the District Court's exercise of such jurisdiction.

The questions here presented have not been, but we think obviously should be settled by this Court. Rule 38, par. 5(b), of this Court. *Beal et al. v. Missouri Pacific R. R. Corp'n in Nebraska, supra.*

III.

The Decision Below Decides Federal Questions in a Way Probably in Conflict With Applicable Decisions of This Court.

That the decision below is probably not in accord with the decision of this Court in *Kline v. Burke Const. Co.*, 260 U. S. 226, seems apparent from the language used in the *Bryant Case* by the Court of Appeals for the Second Circuit in commenting on that case and on the reliance placed on it by the Court of Appeals for the Eighth Circuit in the *Schendel Case*. See *supra*, pp. 12-13.

We believe the decision below to be contrary to the modern trend of the decisions of this Court toward a stricter application of the terms of the inhibition of Section 265 of the Judicial Code. *Oklahoma Packing Co. v. Oklahoma Gas & Electric Co.*, 309 U. S. 4, 8-9; *Hill v. Martin*, 296 U. S. 393; *Riehle v. Margolies*, 279 U. S. 218.

We believe the decision below to be also contrary to the modern trend of decisions beginning with *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, under which federal courts refrain from interfering with, and are bound by, decisions of the courts of the several states on matters of general law or equity, not regulated by federal statutes. See *Jackson v. New York Life Ins. Co.*, 304 U. S. 261; *Ruhlin v. New York Life Ins. Co.*, 304 U. S. 202; *Cities Service Oil Co. v. Dunlop*, 308 U. S. 208, 212; *Russell v. Todd*, 309 U. S. 280, 287; *Thompson v. Magnolia Petroleum Co.*, 309 U. S. 478, 484.

IV.

The Fact That the Decision Sought to be Reviewed is Technically Non-Final, in That It was the Affirmance of an Interlocutory Injunction, is no Reason Here for Denial of the Writ.

We have already shown that the decision below was not concerned with the question of discretion or abuse of discretion which usually arises on appeals from interlocutory injunctions. It went to the fundamental questions of power, jurisdiction and conflict. It held that the State court was without the power to enjoin and that the District Court had the power to enjoin.

This Court's jurisdiction to review cases in the Circuit Courts of Appeals under Section 240(a) of the Judicial Code, is not, however, confined to review of final decrees of those courts but extends also to interlocutory decrees. *Toledo Co. v. Computing Co.*, 261 U. S. 399, 418. And see the discussion in Robertson & Kirkham's *Jurisdiction of the Supreme Court of the United States* (1936), pp. 201-204 and 623-628, and cases cited.

In *American Construction Co. v. Jacksonville, etc., Ry. Co.*, 148 U. S. 372, it was held that certiorari to review a decree of a Circuit Court of Appeals on appeal from an interlocutory order will issue to prevent extraordinary inconvenience and embarrassment, or where the question of law involved is novel and important, and where the position of the petitioner is one which, if correct, renders the decision of the court below wholly void.

We have shown that the questions involved in the decision below are novel and important.

If petitioner is correct, and if the Court of Appeals for the Second Circuit was correct in the *Bryant Case*, then the District Court below was wholly without power to issue the interlocutory injunction and, if so, the decision sought to be reviewed is wholly void.

Moreover, the nature of this case is such that unless petitioner can secure review of the decision below at this stage, all of petitioner's rights which the Tennessee court sought

by its injunction to protect, will be lost by the time a final judgment is rendered by the federal courts in the liability action. The questions here sought to be raised would then have become moot.

If the decision below be not reviewed at this stage, by this Court, it stands as an effective, if not technical, finality. Petitioner will be restrained from taking any proceeding to enforce its Tennessee injunction. Indeed it is mandatorily ordered to dismiss its Tennessee equity suit, whatever the Tennessee court may think of such action. Petitioner will be forced to trial of the liability action in the distant District Court in Missouri. It will incur all the hardship and expense of taking witnesses from their homes and places of work in Tennessee and North Carolina to Missouri, with consequent disruption of their regular work, upon which the Tennessee Court based its injunction.

If the respondent then secures a final judgment in the liability action, all of the hardship, inequity and expense considered by the Tennessee court will have already been suffered, with no possibility of recovery, and no remedy by review of such final judgment would be available to petitioner on the questions here presented, however erroneous the decision now sought to be reviewed may be.

It is, therefore, respectfully submitted that the petition for certiorari should be granted.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1941.

No. 24.

SOUTHERN RAILWAY COMPANY, *Petitioner*,

v.

ETHEL PAINTER, ADMINISTRATRIX OF THE ESTATE OF
GEOFFREY L. PAINTER, DECEASED, *Respondent*.

On Writ of Certiorari to the United States Circuit Court of
Appeals for the Eighth Circuit.

BRIEF FOR PETITIONER.

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On Writ of Certiorari to the United States Circuit Court of
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BRIEF FOR PETITIONER.

OPINION BELOW.

The Trial Judge in the District Court below filed no opinion. He made findings of fact and stated conclusions of law which followed the allegations of respondent's supplemental equitable complaint. (R. 42-49.) The opinion below, of the Circuit Court of Appeals for the Eighth Circuit, is reported in 117 F. (2d) 100-108. It appears in the record, pages 78 to 94.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on January 10, 1941. (R. 94.) Petition for writ of certiorari was filed in this court on February 4, 1941 (R. cover), and certiorari was granted on May 26, 1941, 312 U. S. (Adv. No. 3) v.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, 28 U. S. C. 347.

QUESTIONS PRESENTED.

1. Whether the Chancery Court of Knox County, Tennessee, having jurisdiction of the person of respondent, had the right, power, authority and jurisdiction, in an equity suit brought by petitioner, to enjoin respondent, a resident of Knox County, Tennessee, and acting as administratrix by appointment of the Knox County Probate Court, from prosecuting in the District Court of the United States for the Eastern District of Missouri an action at law to recover damages under the Federal Employers' Liability Act for the death of her deceased husband, the fatal accident having happened in North Carolina, and both the respondent and her intestate being residents of Knox County, Tennessee.

2. Whether the decree of the Chancery Court of Knox County, Tennessee, is binding upon respondent, both individually and in her representative capacity, until set aside or reversed; and whether the District Court was required to give full faith and credit to such decree under Article IV, Sec. 1, of the Constitution of the United States, and under 1 Stat. 122 as amended, 28 U. S. C. 687.

3. Whether the District Court, on a supplemental equitable complaint filed in an action at law there under the Federal Employers' Liability Act, had the right, power, authority and jurisdiction to issue an injunction against petitioner, restraining and enjoining it from prosecuting or

maintaining its chancery suit in Knox County, Tennessee, and ordering and directing petitioner to dismiss its said chancery suit.

4. Whether Section 265 of the Judicial Code (28 U. S. C. 379) deprived the District Court of the right, power, authority and jurisdiction to issue its interlocutory injunction.

5. Whether the Tennessee decree actually and legally enjoined proceedings in the federal court, or whether it was a mere personal decree against respondent, issued by the Tennessee court against one of its own citizens, restraining her personally from doing an inequitable, oppressive and harassing act.

STATUTES INVOLVED.

Two federal statutes are involved:

First: The Federal Employers' Liability Act, 35 Stat. 65-66, 45 U. S. C. 51-59, as amended by the Act of August 11, 1939, 53 Stat. 1494, and particularly the jurisdictional and venue section thereof, 45 U. S. C. 56, which provides:

"Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States, and no case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States."

Second: Section 265 of the Judicial Code, 28 U. S. C. 379, which provides:

“The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.”

STATEMENT.

The case is here on certiorari to review a judgment of the United States Circuit Court of Appeals for the Eighth Circuit, which affirmed an injunctional order issued by the District Court of the United States for the Eastern District of Missouri (on a supplemental equitable complaint filed by respondent in an action there pending by her against petitioner under the Federal Employers' Liability Act), restraining petitioner from enforcing against respondent an injunction issued at petitioner's instance by the Chancery Court of Knox County, Tennessee (from which state court injunction respondent did not appeal), and mandatorily commanding petitioner to dismiss and set at naught its suit in the Tennessee court.

On August 31, 1939, respondent, a resident of Knox County, Tennessee, and administratrix of her deceased husband's estate by appointment of the Probate Court of that County and State, filed an action at law against petitioner, in the United States District Court for the Eastern District of Missouri, Eastern Division, to recover damages under the Federal Employers' Liability Act (35 Stat. 65-66, 45 U. S. C. 51-59) for the alleged wrongful death of her intestate on February 3, 1939, near Paint Rock, Madison County, North Carolina, while he was employed by petitioner as a fireman on an interstate train operated between points in Tennessee and North Carolina. (R. 2, 3.)

To an amended complaint filed on March 8, 1940 (R. 7), petitioner answered (R. 10), raising issues as to negligence, contributory negligence and assumption of risk.

Thereafter, on May 27, 1940, the Chancery Court of Knox County, Tennessee, in a suit brought by petitioner against respondent (R. 26), having therein jurisdiction of

the person of respondent, both individually and in her representative capacity, by personal service of process upon her (R. 19), enjoined respondent under the laws of Tennessee, individually and as a Tennessee administratrix, from further prosecuting and maintaining her said action against petitioner in the United States District Court for the Eastern District of Missouri, and from instituting any other suit on her alleged cause of action, except in the State courts of either Knox County, Tennessee, or Madison County, North Carolina, or in the United States District Courts for either the Eastern District of Tennessee at Knoxville or the Western District of North Carolina at Asheville. (R. 33.)

The Tennessee court based its injunction on general grounds of equity: that for respondent, a resident and probate court appointee of Tennessee, to avoid bringing her Liability Act suit in either the state or federal courts in Tennessee, the state of residence, or in either the state or federal courts of North Carolina, where the cause of action arose, but to export her cause of action to the distant jurisdiction of Missouri and there to sue petitioner in the federal district court, when all the witnesses live in western North Carolina or eastern Tennessee, would be inequitable, harassing and oppressive, and would work an unjust and inequitable hardship on petitioner. (R. 26-36.)

Respondent did not appeal from the injunction issued by the Tennessee court. Instead, she filed, on June 21, 1940, in her action at law pending in the United States District Court for the Eastern District of Missouri, a supplemental equitable complaint, setting out the proceedings had and the judgment rendered against her in the equity suit in the Tennessee court, and thereupon moved for a temporary injunction against petitioner. (R. 14-37.)

On July 10, 1940, upon hearing solely upon respondent's sworn supplemental complaint and motion for temporary injunction, the District Court of the United States for the Eastern District of Missouri, Eastern Division, issued what it designated as a "Writ of Preliminary Injunction," but

which, without limitation of time, broadly enjoined petitioner from interfering in any way with the liberty of respondent in prosecuting her said action in that court, from interfering in any way with that court's jurisdiction in the case, from further prosecuting petitioner's equity suit in the Chancery Court of Knox County, Tennessee, and from taking any except dismissal proceedings therein. (R. 51-54, 73-76.)

This injunction order went even further and mandatorily and unconditionally commanded and directed petitioner forthwith to dismiss and set at naught its suit in the Tennessee court. (R. 53, 75.) In its terms and in effect, this part of the injunction was final, not preliminary or interlocutory.

From that order petitioner appealed, with supersedeas, under Section 129 of the Judicial Code as amended, 28 U. S. C. 227, to the United States Circuit Court of Appeals for the Eighth Circuit. (R. 1, 55.)

On January 10, 1941, that court affirmed the decree of injunction issued by the District Court. (R. 94.) In its opinion, the court recognized that it was dealing with important questions of conflict between state and federal courts and that its decision was squarely in conflict with the decision of the Circuit Court of Appeals for the Second Circuit in a case on closely similar facts, *Bryant v. Atlantic Coast Line R. Co.*, 92 F. (2d) 569. (R. 91.)

The Circuit Court of Appeals below held that the Tennessee court was without right, power, authority or jurisdiction to enjoin respondent from prosecuting suit for damages in the United States District Court for the Eastern District of Missouri; that the decree of the Tennessee court was not binding on respondent, and that federal courts are not required by the Constitution of the United States to give full faith and credit to such a decree; that the District Court had the right, power, authority and jurisdiction to issue its injunction restraining and enjoining petitioner from prosecuting or maintaining its chancery suit in Knox County,

Tennessee, and directing petitioner to dismiss that suit; that the District Court was not deprived of power and jurisdiction to issue its injunction by Section 265 of the Judicial Code (28 U. S. C. 379), which expressly prohibits federal courts from enjoining proceedings in state courts, except in bankruptcy matters; and that the decree of the Tennessee court was not merely a personal decree against respondent, restraining her personally from doing an inequitable, oppressive and harassing act, but that the decree actually and legally interfered with and enjoined proceedings in the federal court.

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals erred:

1. In affirming and not reversing the decree of the District Court.

2. In not holding and finding that the District Court was wholly without jurisdiction to issue the preliminary injunction.

3. In affirming the order of the District Court that petitioner be restrained from interfering in any way with the liberty of respondent in carrying on, prosecuting and maintaining her cause of action in the District Court under the Federal Employers' Liability Act.

4. In affirming the order of the District Court restraining petitioner from further prosecuting and maintaining its equity suit against respondent in the Chancery Court of Knox County, Tennessee, and from taking any other than dismissal proceedings therein.

5. In affirming the order of the District Court directing petitioner forthwith to dismiss its said suit in said Chancery Court of Tennessee.

6. In affirming the District Court's assumption of control over the personal acts of respondent, a Tennessee adminis-

tratrix, contrary to the decree of the said Chancery Court of Tennessee.

7. In holding and finding that the judgment and order of the Chancery Court of Tennessee, restraining respondent, was of no force and effect.

8. In not holding and finding that the Chancery Court of Tennessee had jurisdiction of the parties and of the subject matter and cause of action before it, and that its decree enjoining respondent was and is a valid, subsisting and binding decree and judgment, not subject to collateral attack in the District Court below; and in affirming the order of the District Court that petitioner be restrained from carrying the said decree of said Chancery Court of Tennessee into full force and effect.

9. In not holding and finding that the rights, powers and privileges, duties and obligations of respondent, as administratrix, were created and are controlled by the laws of Tennessee, and in affirming the District Court's jurisdiction and control over respondent contrary to the decree and order of said Chancery Court of Tennessee.

10. In failing to give full faith and credit to the judicial proceedings of the State of Tennessee in the said cause pending in said Chancery Court. (Article IV, Section 1, Constitution of the United States; 1 Stat. 122, as amended, 28 U. S. C. 687.)

11. In not holding and finding that, in the absence of an appeal, the judgment and decree of said Chancery Court of Tennessee was a final determination and *res judicata* of the issues there involved, and was a complete bar to the injunction sought by respondent in the District Court.

12. In not holding and finding that the District Court was without power, jurisdiction or right to grant the preliminary injunction against petitioner, by reason of Section 265 of the Judicial Code.

13. In holding that the jurisdiction and venue provision of the Federal Employers' Liability Act, 45 U. S. C. 56, deprived the Chancery Court of Knox County, Tennessee, of all power or jurisdiction to enjoin respondent from prosecuting her action in the District Court below, so that the judgment of said Tennessee Court was null and void, could be collaterally attacked in the District Court, and was not there entitled to full faith and credit.

14. In holding that Section 265 of the Judicial Code did not deprive the District Court of jurisdiction and power to enjoin petitioner from taking further proceedings in its suit against respondent in the said Chancery Court of Tennessee except dismissal proceedings and to order petitioner forthwith to dismiss and set at naught its said suit in said State court.

15. In holding that the District Court had jurisdiction and power to issue the preliminary injunction against petitioner in spite of Section 265 of the Judicial Code.

REFERENCE TO COGNATE CASE.

On February 10, 1941, this Court granted certiorari in a cognate case, No. 678, *Baltimore & Ohio R. R. Co. v. Kepner*, to review a decision of the Supreme Court of Ohio in which that court held that the courts of Ohio were, by reason of the jurisdictional and venue provision of the Federal Employers' Liability Act, without power to enjoin Kepner, a resident of Ohio, from prosecuting in the District Court of the United States for the Eastern District of New York a prior action brought by him under the Liability Act to recover damages for his personal injuries sustained in Ohio, against the Baltimore & Ohio, which was doing business in that district in New York.

On April 14, 1941, this Court affirmed the judgment in the *Kepner Case*, *supra*, by an equally divided court, without opinion, 312 U. S. (Adv. No. 1) ii. But on April 28, 1941, it granted petition for rehearing and vacated its judg-

ment in that case, as in four other cases, and restored the *Kepner Case* to the docket for reargument and hearing on October 13, 1941, 312 U. S. (Adv. No. 2) v.

In granting certiorari in the present case this Court assigned the present case for argument immediately following No. 678, *Baltimore & Ohio R. R. Co. v. Kepner*, as we were advised by the Clerk.

The *Kepner Case* did not involve a death action under the Liability Act. Kepner in his action in the federal district court in New York was suing as an individual, in his own right, to recover damages for his own personal injuries. He needed no authority from Ohio, the state of his residence, to create the status in which he sued. Respondent in our case is suing in the federal district court in Missouri solely in her representative capacity, as a Tennessee administratrix, to recover damages for the alleged wrongful death of her intestate. Her very status as such administratrix was created by appointment by the probate court in Tennessee. She remains subject to the authority of Tennessee courts in the administration of her office. A stronger case is presented for the power of the courts of the state of her residence, appointment and function to enjoin her from suing in a distant and foreign jurisdiction, than in the case of an individual resident suing in a foreign jurisdiction in his individual capacity and pursuant to no state office.

Again, in the *Kepner Case* the state court denied injunction, conceiving that it was without power to grant it. There was no collateral attack on its judgment but a direct review on appeal. No question of collateral attack on the judgment, of denial of full faith and credit, or of injunction by the federal court to restrain proceedings in the state court in violation of Section 265 of the Judicial Code arises in that case. All those questions arise in our case.

ARGUMENT.

I.

The Conflicting Principles Which Must be Reconciled to Extract the True Rule to Govern This Case.

The true rule to govern the case at bar must be spelled out by a balancing and reconciliation of a number of conflicting principles which stem inevitably from our dual system of sovereignties and courts, under which state and federal courts sit in the same physical areas but on different legal planes, with power and jurisdiction coming from different sources, sometimes with concurrent and coordinate jurisdiction over the same persons, issues and controversies, mutually independent each of the other, yet both subject to necessary rules of comity to avoid unseemly conflicts inconsistent with our peculiar, dual constitutional system.

We have the fundamental principle that an administratrix is a state officer, deriving her authority solely from state appointment, and wholly subject to the laws of her state and to the control of its courts in the administration of her office, in conflict with ^{the} fact that Congress has created a cause of action for wrongful death which did not exist at common law, has vested that cause of action in the state officer, and in express terms has given jurisdiction and venue of such cause of action to the federal district court in the distant foreign state in which petitioner railroad is doing business, concurrently with the same jurisdiction and venue in the district court in the district of the residence of petitioner and the district court in the district in which the cause of action arose, and concurrently with jurisdiction in the courts of the several states.

We have the principle of Section 265 of the Judicial Code, that "the writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy" (*Diggs v. Wolcott*, 4 Cranch. 179; *Watson v. Jones*, 13

Wall, 679; *Haines v. Carpenter*, 91 U. S. 254; *Dial v. Reynolds*, 96 U. S. 340; *Hall v. Barr*, 234 U. S. 712; *Essanay Film Co. v. Kane*, 258 U. S. 358; *Hill v. Martin*, 296 U. S. 393, 403; *Oklahoma Packing Co. v. Gas Co.*, 309 U. S. 4, 8-9; *Kohn v. Central Distributing Co.*, 306 U. S. 531; *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U. S. 270, 274, decided February 3, 1941) in conflict with a rule of comity whereby state courts, subject to important exceptions and limitations, ought not to interfere with proceedings in the United States courts where the latter have jurisdiction. (*Peck v. Jenness*, 7 How. 612; *Moran v. Sturges*, 154 U. S. 256; *Oklahoma v. Texas*, 265 U. S. 490; Compare *Kline v. Burke Construction Co.*, 260 U. S. 226; *Richle v. Margolies*, 279 U. S. 218; *Penn Co. v. Pennsylvania*, 294 U. S. 189; *Princess Lida v. Thompson*, 305 U. S. 456; *Oklahoma Packing Co. v. Gas Co.*, 309 U. S. 4; *Steelman v. All Continent Corp.*, 301 U. S. 278.)

We have the general principle that the first of two coordinate courts to acquire jurisdiction can protect itself in the exercise of that jurisdiction against interference by proceedings in the other court which would defeat or impair the effectiveness of the first court's jurisdiction (*French v. Hay*, 22 Wall. 250; *Dietsch v. Huidkoper*, 103 U. S. 494, 497; *Moran v. Sturges*, 154 U. S. 256; *Julian v. Central Trust Co.*, 193 U. S. 93, 112; *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 U. S. 239, 245; *Gunter v. Atlantic Coast Line R. Co.*, 200 U. S. 273; *Wells Fargo & Co. v. Taylor*, 254 U. S. 175, 184) in conflict with the important, but not always clearly defined, exception to or limitation upon that principle, which makes the principle apply only where there is conflict *in rem* or *quasi in rem* and not where the conflict is only *in personam*. (*Kline v. Burke Construction Co.*, 260 U. S. 226; *Lion Bonding Co. v. Karatz*, 262 U. S. 77, 88; *Richle v. Margolies*, 279 U. S. 218; *Penn Co. v. Pennsylvania*, 294 U. S. 189, 195; *Princess Lida v. Thompson*, 305 U. S. 456, 465.)

We have the modern doctrine of *Eric R. Co. v. Tompkins*, 304 U. S. 64, whereby questions of general, unwritten law or equity, not covered by the Constitution, treaties or statutes of the United States, are remitted wholly to the states, with decisions of the state courts binding on all federal courts, in conflict with a contention that the jurisdiction and venue provision of the Federal Employers' Liability Act, enacted long before *Eric R. Co. v. Tompkins* was decided and when the doctrine of *Swift v. Tyson*, 16 Pet. 1, was understood to be the law, impliedly takes away from courts of the state of appointment and residence of a personal representative the power, which such courts would otherwise have, to restrain the personal representative from an inequitable resort to the courts of a distant, foreign jurisdiction, although the Liability Act does not in terms purport to deprive the state courts of that power.

We have the doctrine that federal courts must give full faith and credit to the unreversed judgments of the courts of the states (Article IV, Sec. 1, of the Constitution; 1 Stat. 122, as amended, 28 U. S. C. 687) and will not entertain collateral attacks thereon, see *Wagner Co. v. Lyndon*, 262 U. S. 226, except in the case of fraud, *Marshall v. Holmes*, 141 U. S. 589, or want of jurisdiction, *Simon v. Southern Ry. Co.*, 236 U. S. 115; *Pennoyer v. Neff*, 95 U. S. 714, standing in conflict with a principle sometimes declared that a federal court will entertain such a collateral attack and will deprive a party by means of an injunction of the benefit of a state court judgment, even though it may be valid at law, "where its enforcement will be contrary to recognized principles of equity and the standards of good conscience," *Wells Fargo & Co. v. Taylor*, 254 U. S. 175.

Whether the basic holding in *Wells Fargo & Co. v. Taylor*, *supra*, was sound may well be doubted in the light of more recent decisions. Cf. *Essanay Film Co. v. Kane*, 258 U. S. 358; *Wagner Co. v. Lyndon*, 262 U. S. 226; *Richle v. Marquies*, 279 U. S. 218, 223; *Hill v. Martin*, 296 U. S. 393, 403; *Eric R. Co. v. Tompkins*, 304 U. S. 64; *Oklahoma Packing Co. v. Gas Co.*, 309 U. S. 4, 8-9.

The difficulty of reconciling the conflicting principles which collide in this case is sharply illustrated by the diametrical conflict in conclusions reached on the same issues and questions by two such able courts as the Court of Appeals for the Eighth Circuit in the decision below (R. 78-94) and the Court of Appeals for the Second Circuit in *Bryant v. Atlantic Coast Line R. Co.*, 92 F. (2d) 569.

II.

The Chancery Court of Tennessee Had the Power to Restrain Respondent, a Tennessee Administratrix, on Equitable Grounds, from Exercising Her Legal Right to Sue Under the Liability Act in the Distant Federal District Court in Missouri, Unless That Power is Taken Away (1) By the Jurisdictional and Venue Provision of the Liability Act or (2) By the Rule of Comity Whereby, Under Some Circumstances, the First Court to Acquire Jurisdiction Can Protect Its Jurisdiction by Injunction to Prevent Conflicting Proceedings in the Court of Coordinate Jurisdiction.

The general and inherent power of courts of equity to enjoin residents within their jurisdiction from prosecuting actions at law in foreign jurisdictions under harassing, vexatious or inequitable circumstances cannot be doubted.

In *High on Injunctions*, 4th ed., secs. 103-105, the author states the English rule whereby the English Chancery Court, although it will not undertake directly to interfere with process or proceedings of foreign tribunals, will, when parties to a foreign suit are within the English jurisdiction, restrain them by injunction *in personam* from proceeding further in the foreign court in a manner contrary to equity and good conscience. A clear distinction is drawn between interference with the foreign court as such and *in personam* restraint against the parties. Then in section 106 the author states the American rule as follows:

“While in this country the aid of equity is rarely if ever invoked to restrain proceedings in the courts of

foreign nations, yet the same principles are held applicable to the case of enjoining citizens of one state from proceedings at law in the courts of a sister state. And while there is a lack of uniformity, amounting even to a conflict of authority, in the decided cases, the English rule seems to have the support of the clear weight of authority; and the courts of one state will, in a proper case, enjoin persons within their jurisdiction from instituting legal proceedings in other states, or from further proceedings in actions already begun. (Citing many cases.) As we have seen in a preceding section, a distinction is drawn between a court of equity interfering with the action of the courts of a foreign state, and restraining persons within its own jurisdiction from using foreign tribunals as instruments of wrong and oppression. While, therefore, the court will assume no control over the course of the proceedings in the foreign tribunal, it may and will interfere to prevent those who are amenable to its own process from instituting or carrying on suits in other states which will result in injury and fraud." (Citing many cases.)

Among the leading cases cited by the above author are *Cole v. Cunningham*, 133 U. S. 107, and *Dchon v. Foster*, 4 Allen (Mass.) 545. In *Cole v. Cunningham* this Court approved *Dchon v. Foster* as the leading case on the subject, held that the Massachusetts equity court could competently restrain citizens of that state from further prosecuting attachment suits in New York, and, after full discussion of authorities, said (133 U. S. at 124):

"*Dchon v. Foster*, 4 Allen, 545, is the leading case upon the subject, argued by eminent counsel on both sides, and decided upon great consideration. The Supreme Judicial Court of Massachusetts, speaking through Bigelow, Ch. J., points out that the jurisdiction of a court, as a court of chancery, to restrain persons within its jurisdiction from prosecuting suits, upon a proper case made, either in the courts of Massachusetts or in other states or foreign countries, rests on the clear authority vested in courts of equity over persons within the limits of their jurisdiction and amenable to process, to stay acts contrary to equity and good conscience; and

that, as the decree of the court in such cases is directed solely at the party, it is wholly immaterial that such party is prosecuting his action in the courts of another State or country."

Cole v. Cunningham has been cited and followed by this Court in many cases down to and including *Steelman v. All Continent Corp.*, 301 U. S. 278, 291.

The law of Tennessee is to the same effect. *Louisville & N. R. Co. v. Ragan*, 172 Tenn. 593, 113 S. W. (2d) 743.

See also to the same effect: 14 Ruling Case Law, secs. 112, 113-114, pp. 411-414; Roberts' Federal Liabilities of Carriers, 2d ed., Vol. 2, Sec. 962; *Ex parte Crandall* (C. C. A. 7th), 53 F. (2d) 969, certiorari denied 285 U. S. 540; *Bryant v. Atlantic Coast Line R. Co.* (C. C. A. 2nd), 92 F. (2d) 569; *Reed's Adm'r. v. Illinois Central R. Co.*, 182 Ky. 455, 206 S. W. 794; *Chicago, M. etc. R. Co. v. McGinley*, 175 Wis. 565, 185 N. W. 218; *N. Y. C. & St. L. R. Co. v. Matzinger*, 136 Ohio State 271, 25 N. E. (2d) 349; *N. Y. C. & St. L. R. Co. v. Norton*, 331 Mo. 764, 55 S. W. (2d) 272; *In re Spoo's Estate*, 191 Iowa 1134, 183 N. W. 580.

And in *Davis v. Farmers Co-operative Co.*, 262 U. S. 312, 315-316, this Court took judicial notice of the hardship upon carriers of the exportation of damage suits to distant jurisdictions, which was the equity basis of the Tennessee injunction against respondent in our case. This Court there said, Mr. Justice Brandeis writing the opinion:

"That the claims against interstate carriers for personal injuries and for loss and damage of freight are numerous; that the amounts demanded are large; that in many cases carriers deem it imperative, or advisable, to leave the determination of their liability to the courts; that litigation in States and jurisdictions remote from that in which the cause of action arose entails absence of employees from their customary occupations; and that this impairs efficiency in operation, and causes, directly and indirectly, heavy expense to the carriers; these are matters of common knowledge. Facts, of which we, also, take judicial notice, indicate that the burden upon interstate carriers imposed spe-

cifically by the statute here assailed is a heavy one; and that the resulting obstruction to commerce must be serious. During federal control absences of employees incident to such litigation were found, by the Director General, to interfere so much with the physical operation of the railroads, that he issued General Order No. 18 (and 18A) which required suit to be brought in the county or district where the cause of action arose or where the plaintiff resided at the time it accrued. That order was held reasonable and valid in *Alabama & Vicksburg Ry. Co. v. Journey*, 257 U. S. 111. The facts recited in the order, to justify its issue, are of general application, in time of peace as well as of war."

The holding in *Davis v. Farmers Co-operative Co.*, *supra*, has been frequently reaffirmed. *Atchison & S. F. Ry. Co. v. Wells*, 265 U. S. 101, 103; *Eastman Co. v. Southern Photo Co.*, 273 U. S. 359, 373; *Michigan Central v. Mix*, 278 U. S. 492, 494-495; *Denver & R. G. W. R. Co. v. Terte*, 284 U. S. 284, 287.

It would seem that the rule in favor of the power of the equity courts of a state to restrain its citizens on equitable grounds against maintaining suits at law in distant foreign jurisdictions must necessarily apply *a fortiori* where the person restrained is not merely a resident of the state but is a state officer, a personal representative, appointed by and accountable to the courts of the state of residence for her official acts. Such is our case. Respondent is suing in the liability action in the federal district court in Missouri not in her personal right, as to which she might conceivably be more free in exportation of transient causes of action to distant jurisdictions, but solely in her representative capacity as a Tennessee administratrix.

To hold, as the court below held, that the courts of Tennessee are utterly without power to control or restrain her official conduct in refusing to bring her suit in either the state or federal courts of Tennessee or of North Carolina, the state where the accident occurred, all of which courts were and are left open and readily available to her, and in exporting her suit to the distant jurisdiction of the federal court in Missouri, is to take away from the state a very im-

portant power to govern the official conduct of a purely state officer. It is certainly contrary to the spirit, if not to the letter, of the doctrine of *Eric R. Co. v. Tompkins*, 304 U. S. 64.

Such a holding ought not to be sustained unless the Federal Employers' Liability Act very clearly and unmistakably evidences the intention of Congress to take away that vital and ordinary power of the state. We shall see in the next point that it does not.

Personal representatives appointed under state laws are so peculiarly and wholly subject to the control of the courts of the state of appointment that it is generally held that they are without power to sue in any courts except those to which the power of their letters extend. *Dixon v. Ramsay*, 3 Cranch 319; *Doe ex dem. Lewis v. M'Farland*, 9 Cranch 151.

And it is the thoroughly settled general rule that a grant of administration has no operation outside the state in which it is made and that an executor or administrator cannot sue or be sued in his official capacity in the courts of any other country or state than that from which he derives his authority. *Fenwick v. Sears*, 1 Cranch 259; *Dixon v. Ramsey*, 3 Cranch 319; *Doe ex dem. Lewis v. McFarland*, 9 Cranch 151; *Kerr v. Moon*, 9 Wheat. 565; *Smith v. Union Bank*, 5 Pet. 518; *Kane v. Paul*, 14 Pet. 33; *Vaughn v. Northrup*, 15 Pet. 1; *Noonan v. Bradley*, 9 Wall. 394; *Noonan v. Bradley*, 12 Wall. 121; *Union Mut. L. Ins. Co. v. Lewis*, 97 U. S. 682; *Dennick v. Central R. Co.*, 103 U. S. 11; *Wilkins v. Ellett*, 108 U. S. 256; *New England Mut. L. Ins. Co. v. Woodward*, 111 U. S. 138; *Johnson v. Powers*, 139 U. S. 156; *Lawrence v. Nelson*, 143 U. S. 215; 21 Am. Jur., pp. 925-927, see, 981, and pp. 929-930, see, 985.

Under the law of Tennessee a cause of action for wrongful death is an "asset" of the estate of the decedent and is the basis upon which an administrator may be appointed. *Sharp v. C., N. O. & T. P. R. Co.*, 133 Tenn. 1, 9, 179 S. W. 375.

And under the law of that State the existence of property or assets of the deceased within the State, together with the deceased's residence in the State at the time of his death, is the jurisdictional fact which gives jurisdiction to the probate courts of Tennessee to appoint a personal representative. *Woodfin v. Union Planters Nat. Bank & Trust Co.*, 174 Tenn. 367, 125 S. W. (2d) 487.

And, under Tennessee law, sureties on administrators' bonds are not liable for assets brought into Tennessee from another state. *Keaton v. Campbell*, 21 Tenn. 224; *Powers v. Lowe*, 54 Tenn. 84; *Snodgrass v. Snodgrass*, 60 Tenn. 157; *Little v. Cook*, 78 Tenn. 715.

From this it follows that the courts of Tennessee must have the power to control the forum in which the Tennessee administrator is to sue to recover damages for the wrongful death and to require that such suit be brought in Tennessee (in either state or federal courts) else the other beneficiaries will have no protection on the administrator's bond. He may sue in another state, recover and collect there, and there squander or misappropriate the recovery and the other beneficiaries in Tennessee be left without remedy.

Although a recovery in a death action under the Federal Employers' Liability Act is not for the benefit of the personal representative, as such, or even for the benefit of the estate, as such, but is for the benefit of the particular beneficiaries named in the Liability Act, on whose behalf the personal representative acts only as the trustee of an express trust, *American R. Co. of Porto Rico v. Birch*, 224 U. S. 547, yet it is only the "personal representative" under state law who can maintain the cause of action for these beneficiaries, *Pecos v. Rosenbloom*, 240 U. S. 439; *St. Louis, S. F. & T. R. Co. v. Scale*, 229 U. S. 156; *St. Louis, I. M. & S. R. Co. v. Hesterly*, 228 U. S. 702; *Missouri, K. & T. Co. v. Wolf*, 226 U. S. 570; *American R. Co. of Porto Rico v. Birch*, *supra*.

And the federal statutes provide no machinery or jurisdiction for the appointment and control of the personal representative and this function remains one for state control.

In our case the decedent left children as beneficiaries in addition to the widow-administratrix (R. 27). Further, it was alleged and not denied in the Tennessee injunction suit (R. 29) that the decedent's estate was insolvent and that shortly prior to his death the decedent had filed petition in bankruptcy in the United States District Court at Knoxville, Tennessee, and that the bankruptcy proceeding was pending at the date of his death.

Thus, if he had not died, the federal district court in Tennessee would have administered his insolvent estate in bankruptcy. His death left as the only surviving asset a cause of action for wrongful death, which, since he was killed in interstate transportation employment, was a cause of action under the Federal Employers' Liability Act rather than under the Tennessee Lord Campbell's Act statute and which was technically an asset of the beneficiaries named in the Liability Act rather than of the estate as such.

But the sole basis under Tennessee law for the appointment of respondent as administratrix was the existence *in Tennessee* of this cause of action. The courts of Tennessee and the federal district court in Tennessee were and still remain wide open to her to prosecute her cause of action and to recover the asset. Petitioner is in Tennessee and readily subject to suit there. Yet if respondent refuses to recover the asset within the state of her appointment but goes to another state and recovers it there her co-beneficiaries are without protection under Tennessee law.

Under these circumstances it seems to be an utter anomaly for her to be suing as a Tennessee administratrix, to recover the sole asset she was appointed to recover, in the federal district court in Missouri, merely because petitioner, although operating no lines of railroad in that State (R. 28), runs trains interstate from East St. Louis, Illinois, across the river into St. Louis, Missouri.

We doubt if the anomaly of this situation occurred to Congress when it enacted and amended the jurisdiction and venue provision of the Liability Act. We think it probably

had its attention centered, in drafting that provision, on protecting the right of injured persons, suing in their individual right for damages for their own injuries, persons not tied to any one state by office or appointment, to sue in any district in which the carrier is doing business.

We doubt if Congress realized that the same provision, covering both personal injury suits and death actions, purported to authorize a state administrator to export a cause of action existing in the state of appointment, as the sole basis of appointment, into a distant state, contrary to the settled, general rule against foreign suits by administrators, and there to recover outside the jurisdiction of the state of appointment and with the possibility of wasting or misappropriating the recovery in the foreign jurisdiction and leaving the other beneficiaries in the state of appointment without remedy.

However this may be, it follows from what has been shown before, that the chancery court of Tennessee clearly had the power to enjoin respondent from exporting her cause of action to Missouri, unless the jurisdiction and venue provision of the Liability Act or the rule of comity, or the two together, have taken away that power.

III.

Neither the Federal Employers' Liability Act Nor the Rule of Comity Whereby the First of Two Courts of Concurrent Jurisdiction to Acquire Jurisdiction May, in Some Cases, Protect Its Jurisdiction, Takes Away From the Tennessee Court the Power to Enjoin Respondent From Exporting Her Cause of Action and, Conversely, Section 265 of the Judicial Code Deprives the District Court in Missouri of the Power to Enjoin the Proceedings in the Tennessee Court.

1. The reasoning holding of the court below.

The court below based its decision squarely on the provision of Section 6 of the Liability Act as amended, 45 U. S. C. 56, which provides :

"Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several states, and no case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States."

The court below thought that this provision, admittedly giving the district court in Missouri jurisdiction of the liability action concurrent with Tennessee and other courts (R. 80), was subject to no implied qualification leaving power in the Tennessee courts to prevent the respondent exporting her action to the federal court in Missouri, although it admitted, on authority of *Ex Parte Crandall* (C. C. A. 7th, 53 F. (2d) 969, that such qualification did exist as to exporting the action to a foreign state court. (R. 83.)

It relied heavily on a number of cases which are wholly distinguishable from ours (R. 83-90), particularly relying on its own previous decision in *Chicago, M. & St. P. Ry. Co. v. Schudel*, 292 Fed. 326. (R. 86-89.)

It thought that the Tennessee injunction was not a mere *in personam* restraint on respondent within the meaning of the doctrine of *Kline v. Burke Construction Co.*, 260 U. S. 226, and *Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co.*, 309 U. S. 4, but was a direct interference with the jurisdiction of the district court in Missouri. (R. 82, 88, 89, 91.)

It thought that the jurisdiction conferred on the district court in Missouri was mandatory (R. 84), that that court had no discretion as to whether it should exercise this jurisdiction but was positively required to exercise it (R. 89, 90), and it said (R. 90):

"It would create an anomalous situation in the law if the federal court could not refuse to take the case, but that the court of the domicile could none the less prevent it from exercising effective jurisdiction."

It relied on its holding in the *Scheidel Case* (292 F. 326) on the authority of the old cases *French v. Hay*, 22 Wall. 231, and *Riggs v. Johnson County*, 6 Wall. 166, that (R. 88, 89):

"It is settled that where a federal court has first acquired jurisdiction of the subject matter of a cause, it may enjoin the parties from proceeding in a state court of concurrent jurisdiction where the effect of the action would be to defeat or impair the jurisdiction of the federal court."

And on these grounds the court below concluded (R. 90):

"We think that the nature of the dual system compels the conclusion that a state court which assumes to enjoin such an action in a federal court does so in excess of its jurisdiction and renders a decree which is void in so far as it affects proceedings in the federal court. Such a void decree is not entitled to full faith and credit, and its enforcement may be enjoined."

And for these reasons and because it held that the Tennessee injunction was not an *in personam* decree, within the meaning of *Kline v. Burke Construction Co.*, 260 U. S. 226, the court below held that Section 265 of the Judicial Code did not prevent the federal district court's retorting to the Tennessee injunction by itself enjoining petitioner from further prosecuting, and commanding it to dismiss and set at naught, its Tennessee equity suit. (R. 91) The court undertook to sum up the very difficult and complex rules of comity and problems of conflict between state and federal courts (see Charles Warren, 43 Harvard Law Review 345-378) by a sententious formula which we think is obviously an over-simplification, saying (R. 91-92):

"The balance between Sections 262 and 265 of the Judicial Code lies at the point where one court interferes with the other. Neither state nor federal court has jurisdiction to enjoin the other except when one interferes with the province of the other, then the court interfered with has exclusive jurisdiction to prevent the interference. We consider this to be the effect of the code provisions as construed by the Supreme Court."

2. The reasoning and holding of the Court of Appeals for the Second Circuit in *Bryant v. Atlantic Coast Line R. Co.*

In *Bryant v. Atlantic Coast Line R. Co.*, 92 F. (2d) 569, the Court of Appeals for the Second Circuit, L. Hand, Swan, and Augustus N. Hand, Circuit Judges, Judge Learned Hand writing the opinion, reached diametrically opposite conclusions on the same questions, but in a case not so strong for the position of the railroad, because there Bryant was suing in his individual right for damages for his own personal injuries and the question of the power of the courts of appointment to contro, the official conduct of a personal representative by preventing the exportation of a suit to recover assets did not arise.

Bryant was a resident of Virginia and was injured in that state while employed by the Coast Line in interstate transportation. The witnesses lived in Virginia. It was assumed in the case that the Coast Line was also doing business in the Southern District of New York. Bryant sued under the Liability Act in the federal district court for the Southern District of New York. The Coast Line then sued Bryant in the Virginia equity court and procured an injunction restraining him from further proceeding in the action in New York, on the grounds that it was oppressive, inconvenient, vexatious and harassing. Bryant then moved the district court in New York for an injunction to restrain the Coast Line from taking any steps to enforce the Virginia injunction or to further prosecute the Virginia suit. The motion was denied. The Court of Appeals affirmed on the ground that such federal court injunction to stay the proceedings in the Virginia court was forbidden by Section 265 of the Judicial Code.

There, as here, the plaintiff in the liability action asserted that the jurisdiction and venue provision of the Liability Act gave him "the absolute privilege to sue the defendant in any district court where it did business, regardless of whatever burden this might impose upon interstate com-

merce. In all those decisions which hold the contrary, he asserts, the action enjoined was in a state court, on which jurisdiction had been conferred only permissively. Not so in the case of a federal court. Hence the decree of the Virginia court sought in substance to deprive the federal court of a jurisdiction expressly granted by Congress, and it was not only permissible, but necessary, for that court to protect that jurisdiction." (92 F. (2d) 570.) After thus stating the plaintiff's contentions, the court said:

"We think, however, that even, though all this were true, the order below was right, because the situation was within section 379 of title 28, U. S. Code, 28 U. S. C. A., sec. 379 (Rev. St. sec. 720, now Jud. Code sec. 265). That this section covers the situation literally admits of no debate; the only question is whether it falls within any of the exceptions which have come to be engrafted upon it."

Laying aside the express bankruptcy exception, the court then carefully reviewed and analyzed the exceptions which have been judicially "engrafted" upon Section 265, which it found to be as follows:

1. That a federal court which has assumed custody of a *res* may protect that custody by injunction against interference by a state court proceeding, *Farmers' Loan & T. Co. v. Lake Street F. R. Co.*, 177 U. S. 51; *Adelbert College v. Wabash R. Co.*, 215 U. S. 598.¹ Compare *General Baking Co. v. Harr*, 300 U. S. 433, holding that even in that situation the federal court may not enjoin suits in the state courts to declare the rights of claimants to the *res*, if they do not and cannot disturb its custody.²

2. The cognate exception under which a federal court may enjoin suits to seize, or relitigate the title of a purchaser to,

¹ Other cases which might be cited to this exception are: *Moran v. Sturges*, 154 U. S. 256; *White v. Schloerb*, 178 U. S. 542; *Penn. Co. v. Pennsylvania*, 294 U. S. 189.

² Another case which might be cited to this qualification is *Rickle v. Margolies*, 279 U. S. 218.

property bought under its own decree. *Julian v. Central Trust Co.*, 193 U. S. 93;¹ cf. *Riverdale Cotton Mills v. Alabama & G. Mfg. Co.*, 198 U. S. 188.

3. A federal court may enjoin the execution of a judgment which is being attacked for fraud in a suit pending before it, *Marshall v. Holmes*, 141 U. S. 589; *Simon v. Southern Ry. Co.*, 236 U. S. 115;² *Wells Fargo & Co. v. Taylor*, 254 U. S. 175.

4. The exception of jurisdiction to enjoin criminal prosecutions under an unconstitutional statute, *Ex Parte Young*, 209 U. S. 123, was mentioned as "too far afield to need discussion."

5. The "nearer situation,"³ the recognized exception to Section 265 that, when a suit is lawfully removed from a state court under the removal statutes, the federal court may enjoin further proceedings in the state court from which the case has been removed. *French v. Hay*, 22 Wall. 238; *Dictzsch v. Huidekoper*, 103 U. S. 494; *National Steamship Co. v. Tugman*, 106 U. S. 118; *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 U. S. 239; *Chesapeake & Ohio R. Co. v. McDonald*, 214 U. S. 191; *Anderson v. United Realty Co.*, 222 U. S. 164.³

As to this exception to Section 265, the court pointed out, on authority of cases just above cited, that the removal

¹ See also, as within this exception, *Gunter v. Atlantic Coast Line*, 200 U. S. 273.

² In *Simon v. Southern Ry. Co.*, the decision went on the ground of want of jurisdiction of the state court, rather than on the ground of fraud. But both fraud and want of jurisdiction are recognized exceptions to the general rule against collateral attack on judgments.

And it is further to be noted in this connection that this exception does not cover the case of a federal district court enjoining, on the ground of want of jurisdiction because service of process was void, a suit in a state court which has not yet gone to final judgment. *Essanay Film Co. v. Kane*, 258 U. S. 358, distinguishing *Simon v. Southern Ry. Co.*, 236 U. S. 115, on this ground.

³ See also *Chesapeake & Ohio Ry. Co. v. McCabe*, 213 U. S. 207.

statute expressly forbids the state court to proceed further after removal, which has been construed to mean that the state court, after removal, actually loses jurisdiction, so that its decrees are *brutum fulmen*. "To enjoin further proceedings," it said, "is therefore not strictly to enjoin an action in the state court, for the action has passed to the federal court. * * * " (p. 571.)

Then the court distinguished the situation at bar from the situation in the removal cases, saying:

"The situation here is quite different; for even if the Virginia court ought not to have enjoined the plaintiff, it had undoubted jurisdiction to do so; Congress had not forbidden its exercising that jurisdiction." (p. 571.)

Accordingly the court in the *Bryant* case held that the case came within none of the five implied exceptions to the prohibition of Section 265 of the Judicial Code which have been judicially "engrafted" upon that statute, a statute which dates from 1793.

The court then elaborately considered the case of *Chicago, M. & St. Paul Ry. Co. v. Schendel*, (C. C. A. 8th) 292 Fed. 326, upon which the court of appeals below so strongly relied in our case, and disagreed with its conclusions. The court for the Second Circuit thought that the court for the Eighth Circuit, in the *Schendel Case*, had too broadly laid down the proposition that where the federal court has first acquired jurisdiction of the subject-matter of the cause of action it may protect its jurisdiction by injunction restraining conflicting proceedings in state courts, notwithstanding Section 265, and had failed to observe the doctrine of *Kline v. Burke Construction Co.*, 260 U. S. 226, which limits that proposition to cases where the first-acquired jurisdiction of the federal court is *in rem* or *quasi in rem*. We quoted this part of the opinion in the *Bryant Case* in our Brief in Support of the Petition. (pp. 11-12.)

3. The Federal Employers' Liability Act does not deny or take away the jurisdiction of the Court of the state of appointment to restrain a personal representative from exporting a death action to a distant Federal District Court.

There is absolutely nothing in the Federal Employers' Liability Act which expresses any intention of Congress to deny or take away from the state courts the power or jurisdiction which the Tennessee court here exercised. In this respect the Act is entirely different from the Removal Act which, as pointed out in the *Ergant Case*, expressly provides that, upon the filing of proper petition and bond for removal, "It shall then be the duty of the State court to accept said petition and bond and proceed no further in such suit." 28 U. S. C. 72.

If the state court, after proper removal, undertakes to proceed further in such suit, it does so in violation of this mandatory provision of the removal statute. And it is on this ground that this Court has based the removal exception to the prohibition of Section 265 of the Judicial Code, *National Steamship Co. v. Tugman*, 106 U. S. 118, 122; *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 U. S. 239; *Anderson v. United Realty Co.*, 222 U. S. 164.

Nothing corresponding to that provision of the Removal Act is to be found in the Liability Act. It does nothing more than confer jurisdiction on the federal district courts concurrently with the state courts. It even expresses an intention of Congress to prefer the state court jurisdiction, because it expressly provides that no case brought under the Act in any state court of competent jurisdiction shall be removed to any court of the United States. Thus, far from being analogous to the Removal Act, the Liability Act itself takes its cases out from under the operation of the Removal Act. Congress itself expressly distinguished the two situations.

So it is solely upon the mere fact that Congress conferred Liability Act jurisdiction on the federal district courts, con-

currently with the state courts, although expressly preferring the state court jurisdiction, that it can be argued that the Liability Act takes away from the courts of the state of appointment the ordinary power to prevent a personal representative from exporting to a foreign jurisdiction a suit which he can bring solely in his representative capacity as an appointee under state law and under authority of state courts.

But the argument proves too much and leads to an absurdity. If the mere fact that a federal court has jurisdiction of parties and subject-matter of an *in personam* action, concurrently with state courts, takes the case out of Judicial Code Sec. 265, takes away from the state court the power to entertain suits which may practically conflict with the jurisdiction of the federal court, and authorizes federal injunction to stay such state court proceedings, then there is left no room for the application of the prohibition of Section 265. A federal court can never act at all unless it has jurisdiction under an Act of Congress. If the mere existence of federal jurisdiction alone takes the case out of Section 265, then every case which could fall within the prohibition of that Section by that fact falls without the prohibition.

The judicial exceptions which have been "engrafted" on Section 265 certainly go to no such point.

Before it can be held that the Liability Act, by merely conferring concurrent jurisdiction on the federal district^{court} in the district "in which the defendant shall be doing business," has deprived the state court of the residence and appointment of the very vital power of control over the state officer, which we have shown otherwise exists, it must be found that the Act clearly manifests such intention. No such intention is manifested.

The pertinent rule of construction was stated in *Maurer v. Hamilton*, 309 U. S. 598, 614, thus:

"As a matter of statutory construction Congressional intention to displace local laws in the exercise of the commerce power is not, in general, to be inferred unless clearly indicated by those considerations which are persuasive of the statutory purpose."

And the same general principle was stated in *Reid v. Colorado*, 187 U. S. 137, 148, where it was said:

"It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police powers of the States, even when it may do so, unless its purpose to effect that result is clearly manifested. This court has said—and the principle has been often reaffirmed—that 'in the application of this principle of supremacy of an act of Congress in a case where the State law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together.' *Simont v. Davenport*, 22 How. 227, 243."

It is to be observed that the jurisdiction and venue provision of the Liability Act does not even in terms purport to confer jurisdiction on the federal district court in *any* district in which the defendant is doing business. The provision is peculiar. It is:

"Under this chapter an action may be brought in a district court of the United States, in *the* district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business² at the time of commencing such action." (Italics ours.)

That provision reads as if it gave the plaintiff the election to sue in either of three districts. Courts can hardly change the last clause to make it read "or in *any* district in which the defendant shall be doing business at the time of commencing such action." It is hardly a necessary construction of the provision that it intended to leave to a state administrator an uncontrollable election to sue either in his state court or in the federal district of the residence of the carrier, or in the district in which the death occurred, or in any of the many districts in which a carrier like petitioner does business.

But however that may be, it is quite a different matter to construe that provision as taking away from the state and its courts all power to control its own appointee, a state

official, administering upon an estate located in the state, and to restrain exportation of the cause of action to a distant jurisdiction, pursuant to a *state* policy, or pursuant to a *state* conception of equity and good conscience. Such a construction is not "clearly indicated by those considerations which are persuasive of the statutory purpose."

The purpose of the Liability Act was to establish a uniform rule of liability and to create a federal, and hence a uniform, remedy not for all interstate carrier employee casualties but for only a limited part of the whole and *quoad hoc* to exclude application of varying state rules of liability. *New York Central R. Co. v. Winfield*, 244 U. S. 147. The dissenters in that case, Justices Brandeis and Clarke, even thought that there was no inconsistency between the Act and the application of state Workmen's Compensation Acts and recognized the wisdom of leaving such matters to local rule, in view of "the great diversity of conditions in the different sections of the United States." And Mr. Justice Brandeis there further said (p. 168), "The field of compensation for injuries appears to be one in which uniformity is *not* desirable, or at least not essential to the public welfare."

But taking the majority opinion as the true rule, the only purpose of the jurisdiction and venue provision of the Act was to insure the uniformity which the Court holds it was the purpose of the Act to accomplish. If suits are brought in state courts, the uniformity is assured by the review by this Court on certiorari which has been so often exercised. If suit is brought instead in a federal district court, it will apply the uniform federal rule, or the Court of Appeals will, or this Court will on certiorari.

But every purpose of uniformity is protected when the Tennessee administratrix is free to elect between state and federal courts in the state of her residence or appointment. It in no wise contributes to the purpose of uniformity to leave her free to go to Missouri to sue in the district court there, where she is free from all control of the Tennessee probate court and may elect never to return to that control.

It is not within the considerations persuasive of the statutory purpose to hold that the Act takes away from the courts of Tennessee all power to prevent her exporting her cause of action to such foreign jurisdiction. The only purpose of allowing suit in any district where the defendant is doing business, if that be the effect of the provision, is for the convenience of plaintiff in making service of process easy. The easiest place for respondent here to serve petitioner was in her own State of Tennessee. When she elected rather to go to Missouri to sue, she adopted a more inconvenient course, and obviously did so for the purpose of putting petitioner to inconvenience, vexation, harassment and prejudice.

Since it was held in *Eric R. Co. v. Tompkins*, 304 U. S. 64, not only that the decisions of state courts on matters of general or unwritten law are controlling and binding on federal courts, but also that it would have been beyond the power of Congress under the Constitution to supplant state control of such matters or to give the federal courts control thereof, we think it would raise grave question as to the constitutionality of the Federal Employers' Liability Act if it be construed to deny to the courts of Tennessee the power and jurisdiction to control the respondent as a Tennessee administratrix under the facts in this case and to restrain her as she was restrained, from exporting her cause of action, her sole Tennessee asset, from Tennessee to Missouri. A construction which raises such doubts will of course be avoided.

It will be remembered that while the Liability Act created a cause of action for wrongful death which did not exist at common law, although it had been created in most states by statutes patterned on Lord Campbell's Act, yet the Liability Act did not create any federal office or appoint or provide for the appointment of any federal officer to enforce that right, as conceivably it might have done. Congress was content to vest the cause of action in the "personal representative" (45 U. S. C. 51), a state officer, appointed by

state courts, to administer assets within the state, and subject to the control of state courts.

We think the Act cannot be validly construed as intending to take away from the state courts the very important part of that control here involved.

4. **The rule of comity or of protection of first-acquired jurisdiction does not take away from the State Court the power to enjoin, and does not warrant the Federal Court injunction and, conversely, the federal injunction violates Section 265 of the Judicial Code.**

Since the Liability Act does not take away from the Tennessee equity court the jurisdiction and power which it exercised, it only remains to examine whether the rule of comity between courts, or the rule of protection of first acquired jurisdiction, takes the power away from the state court, or takes the case out of the prohibition of Section 265 and warrants the federal court in enjoining and setting at naught the proceeding in the state court.

This is really only another facet of the same problem as presented by the argument based on the Liability Act, since the argument that the rule of comity takes the power to enjoin away from the Tennessee court and gives the power to enjoin to the district court in Missouri, in spite of Section 265, also is based entirely on the fact that the district court in Missouri had jurisdiction, *in personam* jurisdiction, of the liability action.

Here again, the theory of the court below proves too much. For if the mere fact of the existence of such jurisdiction is sufficient to take the case out of the prohibition of Section 265 then every case in which a federal court can act at all is taken out of the prohibition.

The article by Charles Warren, "Federal and State Court Interference," 43 Harvard Law Review 345-378 (January, 1930), cited in the opinion in *Oklahoma Packing Co. v. Gas Co.*, 309 U. S. 4, 9, is an interesting review of the general problem and of the trends of decision.

Beginning with *Diggs v. Wolcott*, 4 Cranch 179, in 1807, and on down to the Civil War period in such cases as *Peck v. Jenness*, 7 How. 612, and *Orton v. Smith*, 18 How. 263, the principle that federal courts cannot enjoin proceedings in the state courts was applied in literal strictness, sometimes expressly invoking the Act of March 2, 1793 (1 Stat. 334), now Section 265, sometimes *sub silentio*.

It was not until after the Civil War and in the period of great expansion of federal power as against states' rights that the judicial exceptions began to be "engrafted" on Section 265. Curiously enough, this process started first in the now repudiated "county bond cases," *Gelpcke v. Dubuque*, 1 Wall. 175, *Riggs v. Johnson County*, 6 Wall. 166, and *Weber v. Lee County*, 6 Wall. 210, in which it was held that the federal courts could substitute their own judgment for the judgment of the highest courts of the states on the question of the validity, under state constitutions and laws, of county and municipal bond issues. We say that those cases are "repudiated" now because they are wholly inconsistent with *Eric R. Co. v. Tompkins*, 304 U. S. 64, and because of the approving references in the opinion in the *Tompkins* case to Mr. Justice Miller's dissenting opinions in the county bond cases.

The article by Warren, written prior to 1930, already noted a then recent tendency of decisions to put brakes on the federal district courts and to limit the judicial exceptions to Section 265. That trend has continued since.

We submit that the analysis by the Court of Appeals for the Second Circuit, in *Bryant v. Atlantic Coast Line R. Co.*, of the judicial exceptions "engrafted" on Section 265 hereinabove reviewed is sound and cogently demonstrates that the federal injunction in the present case does not come within any of those exceptions.

And we think the Court of Appeals for the Eighth Circuit, in the opinion here under review, was unsound when it held that the jurisdiction given by the Liability Act to the district court in Missouri is mandatory, that the court had no discretion but to exercise it, that such jurisdiction

took away from the Tennessee court all power and jurisdiction to restrain the respondent from further prosecuting her liability action in the district court in Missouri, and that, therefore, the Tennessee injunction was void and entitled to no faith and credit and might be retorted to by federal injunction.

It certainly is not necessarily or universally true, as the court below held, that such jurisdiction given to a federal district court is mandatory and must be exercised, regardless of conflict with state courts.

In *Canada Malting Co. v. Paterson Co.*, 285 U. S. 413, it was held that an admiralty court, although it had jurisdiction of a suit between Canadians, properly exercised a discretion not to exercise the jurisdiction, in view of the pendency in the admiralty court of Canada of suits to determine liability between the parties. And that this principle is not confined to admiralty jurisdiction is clear from the following statement by this Court (422-423):

"Obviously, the proposition that a court having jurisdiction must exercise it, is not universally true; else the admiralty court could never decline jurisdiction on the ground that the litigation is between foreigners. Nor is it true of courts administering other systems of our law. Courts of equity and of law also occasionally decline, in the interest of justice, to exercise jurisdiction, where the suit is between aliens or non-residents or where for kindred reasons the litigations can more appropriately be conducted in a foreign tribunal."

In our case the action in the district court in Missouri was between non-residents of Missouri. Obviously the litigation could more conveniently and appropriately be conducted in the Tennessee courts or in the federal district court in Tennessee, where all the witnesses live. No reason is seen why it would not have been a proper exercise of discretion for the district court in Missouri to decline to exercise jurisdiction, especially when faced with the fact that the Tennessee court had enjoined respondent, a Tennessee administratrix, from further proceeding in Missouri, on its own conception of equity.

The same principle of discretion to yield up and refuse to exercise federal jurisdiction to avoid conflict with state courts was given direct application by this Court in *Penn Co. v. Pennsylvania*, 294 U. S. 189. There was involved an actual race between the federal district court in Pennsylvania and the court of that state for jurisdiction and possession of the property and business of a Pennsylvania insurance company. Both courts appointed receivers and ordered the company to turn over its property and business to the respective receivers. That was a case of *in rem* conflict and hence clearly within the exception to Section 265 that in case of *in rem* conflict the court which first acquires jurisdiction of the *res* may protect its jurisdiction by injunction. The federal court in that case first acquired jurisdiction. Both courts enjoined the company. The company was in a dilemma and the courts were at an impasse.

There was no attempt at collateral attack on either court's decree but an orderly, direct review of the state court's decree. This Court resolved the dilemma and avoided the impasse by holding that since the federal court had first acquired jurisdiction *in rem*, the rule of comity took away from the state court the power or jurisdiction to interfere with that jurisdiction. It expressly distinguished that situation from a case of mere *in personam* conflict, where the court first acquiring jurisdiction does not have exclusive jurisdiction or the power to exclude the second court, on an authority of *Buck v. Colbath*, 3 Wall. 334, and *Kline v. Burke Construction Co.*, 260 U. S. 226.

Therefore this Court reversed the decree of the Pennsylvania court but with what amounted to a plain suggestion to the federal district court that it relinquish its jurisdiction in favor of the state court. This Court (p. 198) pointed out that, although the decree of the state court could not competently interfere with the prior-acquired jurisdiction *in rem* of the federal district court, yet "it did confer on the Commissioner the requisite authority to ask the district court to relinquish its jurisdiction in favor of the state ad-

ministration." And, in reversing the state court, this Court said (p. 199):

"The decree must accordingly be reversed and the cause remanded for further proceedings not inconsistent with this opinion, but without prejudice to an application by the Commissioner to the district court for an order relinquishing its jurisdiction over the property of the company and vacating its injunction against surrender of it to the Commissioner for liquidation under the Insurance Department Law of the state. See No. 394, *Pennsylvania v. Williams*, *supra*."

In the case referred to, *Pennsylvania v. Williams*, 294 U. S. 176, practically the same situation as to *in rem* conflict between the federal district court in Pennsylvania and state officers acting under the banking laws of Pennsylvania was involved. There the review by this Court was of the action of the federal district court. And, although it held that the district court had prior *in rem* jurisdiction, yet it reversed the district court, directed it to relinquish jurisdiction in favor of the state officers and to take no further exercise of jurisdiction except to discharge the federal receivers and settle their accounts. This was done on authority of *Harkin v. Brundage*, 276 U. S. 36.

The same principle was applied in *Harkin v. Brundage*, *supra*, where the federal court first acquired *in rem* jurisdiction but the state court was prevented from first acquiring such *in rem* jurisdiction by a fraud upon the state court, which this Court held under the circumstances to amount to a fraud on both courts. This Court held that the federal district court had jurisdiction, first acquired and *in rem*, but that in view of the fraud on the state court the federal court, in addition to punishing those guilty of the fraud, was required by "forbearance and comity" to surrender jurisdiction and possession of the *res* to the state court.

Those were all cases where the conflict between courts was *in rem*, where the federal courts had first acquired *in rem* jurisdiction and, hence, under the settled rule of comity and exception to Section 265 of the Judicial Code, had tech-

nial power and jurisdiction to exclude the state courts even by injunction, yet in all of them this Court held that the federal courts should have exercised discretion to relinquish jurisdiction in favor of state courts and officers.

We think it *a fortiori* true that in a case like ours, where the conflict is only *in personam* and not *in rem*, the federal court in Missouri had discretion to refuse to exercise its purely *in personam* jurisdiction, when faced with the Tennessee injunction restraining respondent from further proceeding in its jurisdiction. We think it obvious that the court below was wrong in holding that merely because the district court in Missouri had technical jurisdiction under the Liability Act it was mandatorily required to exercise it at all events and had no discretion to refuse to do so.

But our case is even stronger than that. For the district court in Missouri went further than merely refusing to decline to exercise jurisdiction or to relinquish it in favor of other courts. It summarily enjoined further proceedings in the Tennessee court and ordered petitioner to dismiss that proceeding and set it at naught. And the Court of Appeals below affirmed on the theory not only that the district court had jurisdiction but that, having jurisdiction, its jurisdiction was exclusive of all power in the state court so as to make the state court injunction void, and that the district court was mandatorily required to exercise its jurisdiction and to protect it by its own injunction, regardless of Section 265 of the Judicial Code.

In the very recent case of *Railroad Commission of Texas v. The Pullman Company*, 312 U. S. 496, 500-501, decided March 3, 1941, this Court gave effect to and a clear statement of the doctrine whereby federal courts will abstain from exercise of jurisdiction to avoid conflicts with state courts. It was there said:

"An appeal to the chancellor, as we had occasion to recall only the other day, is an appeal to the exercise of the sound discretion which guides the determination of courts of equity." *Beal v. Missouri Pacific R. R.*, No. 72, decided January 20, 1941. The history of equity

jurisdiction is the history of regard for public consequences in employing the extraordinary remedy of the injunction. There have been as many and as varied applications of this supple principle as the situations that have brought it into play. See, for modern instances, *Beasley v. Texas & Pacific Ry.*, 191 U. S. 492; *Harrisonville v. Dickey Clay Co.*, 289 U. S. 334; *United States v. Dern*, 289 U. S. 352. Few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies, whether the policy relates to the enforcement of the criminal law, *Fenner v. Boykin*, 271 U. S. 240; *Spelman Motor Co. v. Dodge*, 295 U. S. 89; or the administration of a specialized scheme for liquidating embarrassed business enterprises, *Pennsylvania v. Williams*, 294 U. S. 176; or the final authority of a state court to interpret doubtful regulatory laws of the state, *Gilchrist v. Interborough Co.*, 279 U. S. 159; cf. *Hawks v. Hamill*, 288 U. S. 52, 61. These cases reflect a doctrine of abstention appropriate to our federal system whereby the federal courts, 'exercising a wise discretion', restrain their authority because of 'scrupulous regard for the rightful independence of the state governments' and for the smooth working of the federal judiciary. See *Cavanaugh v. Looney*, 248 U. S. 453, 457; *Di Gioranni v. Camden Ins. Assn.*, 296 U. S. 64, 73. This use of equitable powers is a contribution of the courts in furthering the harmonious relation between state and federal authority without the need of rigorous congressional restriction of those powers. Compare 37 Stat. 1013; Judicial Code, § 24(1), as amended, 28 U. S. C. § 41(1); 47 Stat. 70, 29 U. S. C. §§ 191-15."

And that the prohibition of Section 265 of the Judicial Code must be scrupulously applied, was indicated in the later case of *Shamrock Oil & Gas Corp. v. Sheets*, 85 L. ed. (Adv.) 836, 840, decided April 28, 1941, where it was said:

"Not only does the language of the Act of 1887 evidence the congressional purpose to restrict the jurisdiction of the federal courts on removal, but the policy of the successive acts of Congress regulating the jurisdiction of federal courts is one calling for the strict construction of such legislation. The power reserved

to the states under the Constitution to provide for the determination of controversies in their courts, may be restricted only by the action of Congress in conformity to the Judiciary Articles of the Constitution. 'Due regard for the rightful independence of state governments which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined'. *Healy v. Ratta*, 292 U. S. 263, 270; see *Kline v. Burke Construction Co.*, 260 U. S. 226, 233, 234; *Matthews v. Rogers*, 284 U. S. 521, 525; cf. *Elgin v. Marshall*, 106 U. S. 578."



It seems clear that when respondent, by the supplementary proceedings in the liability action, appealed to the district court as a chancellor to enjoin the enforcement of the state court injunction, a situation was presented within this principle of abstention and in which the district court had certainly a discretion not to issue the injunction, if indeed it be assumed that he had any power to issue the injunction in view of Section 265, and we think we have shown that he had no such power. But the Court of Appeals below held that the district court was without discretion to refuse to exercise jurisdiction in the liability action and was mandatorily required to protect that jurisdiction by injunction, although that jurisdiction was purely *in personam*.

Decisions of this Court not only do not support the holding below; they conclusively show, as we read them, that the holding was wrong. The court below expanded, far beyond the limitations this Court has put upon it, the exception to the prohibition of Section 265 growing out of the rule of comity between courts, whereby the court which first acquires jurisdiction may, in some cases, protect its jurisdiction by injunction against conflicting proceedings in the other court.

It is clear that the rule of comity itself, the exclusiveness of first-acquired jurisdiction, and hence the power to protect first-acquired jurisdiction against conflicting proceedings in other courts of coordinate and concurrent jurisdiction, is confined to cases where the first-acquired jurisdiction is *in*

rem or *quasi in rem*. *Kline v. Burke Construction Co.*, 260 U. S. 226; *Lion Bonding Co. v. Karatz*, 262 U. S. 77, 88; *Richle v. Margolies*, 279 U. S. 218; *Penn Co. v. Pennsylvania*, 294 U. S. 189, 195; *Princess Lida v. Thompson*, 305 U. S. 456, 465; *Kelleam v. Maryland Casualty Co.*, 312 U. S. 377.

And that that doctrine is so limited to protection of jurisdiction *in rem* or *quasi in rem* and does not extend to protection of purely *in personam* jurisdiction, when it is a federal court which is undertaking to protect its jurisdiction against conflicting proceedings in state courts, is true *a fortiori* by reason of the very prohibition of Section 265 itself, a prohibition which has existed since 1793 and which Mr. Justice Brandeis referred to, in his dissent in the famous and now obsolete case of *Truax v. Corrigan*, 257 U. S. 312, 376, as a statutory denial of the preventive remedy of injunction "because of a public interest deemed paramount." See also *Oklahoma Packing Co. v. Oklahoma Gas Co.*, 309 U. S. 4, 8-9, where Section 265 was referred to as "a limitation of the power of the federal courts dating almost from the beginning of our history and expressing an important Congressional policy—to prevent needless friction between state and federal courts."

It is to be noted that there is no such statutory limitation of the power of state courts to issue injunctions and that such limitation as exists depends solely on the judicial doctrine of comity. But both the doctrine of comity and the express statutory denial limit the injunctive power of the federal courts.

The court below in our case, although it discussed *Kline v. Burke Construction Co.*, 260 U. S. 226 (R. 90-91), failed to give effect to the very distinction between *in rem* and *in personam* jurisdiction drawn in that case, and it overlooked the clear limitation on the doctrine whereby the court first acquiring jurisdiction may protect its jurisdiction by injunction, which limits that right to protection of jurisdiction *in rem* or *quasi in rem*.

Nothing can be plainer than the fact that the district court in Missouri had no jurisdiction *in rem* or *quasi in rem*. Its

only jurisdiction was purely *in personam*, of an action *in personam* for money damages for wrongful death. The protection of that kind of jurisdiction by injunction to stay proceedings in a state court is not within any exception which has been engrafted on Section 265.

The court below, we think, gave expression to a very queer confusion of thought in this connection. It did not assert that the federal district court had anything other than *in personam* jurisdiction or that it was protecting any first-acquired jurisdiction *in rem* or *quasi in rem*. Indeed it noted the very distinction drawn in *Kline v. Burke Construction Co.* What it did hold was that the *Tennessee injunction suit* was not an *in personam* action within the meaning of that distinction, and for that reason held that Section 265 did not apply.

It commented on the discussion of its opinion in the *Schendel Case* by the Court of Appeals for the Second Circuit in *Bryant v. Atlantic Coast Line R. Co.*, 92 F. (2d) 569, pointing out that that court thought the court below had misconstrued *Kline v. Burke Construction Co.* in the *Schendel Case*, and said (R. 91):

"It appears to have been the view of the Second Circuit that since the state injunction suit was in personam and the federal damage suit and the proceedings ancillary thereto were also in personam, they were suits that could proceed simultaneously and *pari passu*. * * * But an action for injunction is not an *in personam* action of this nature, and interference by one court or the other with the trial of such actions is the very thing which the opinion in the *Kline case* seems intended to prevent."

Thus the court below seems to have thought that the Tennessee injunction restraining respondent personally was not truly an *in personam* judgment but was something in the nature of a proceeding *quasi in rem*.

It overlooked the fact that if that were so, then it was the state court of Tennessee which first acquired jurisdiction *quasi in rem*. In that case, under the doctrine of the cases

hereinbefore cited, the state court therefore had the power to protect its jurisdiction against conflicting proceedings in the federal court. From its view that the state court proceeding was not *in personam* the court below drew the logically inverted conclusion that therefore the federal court could enjoin the state court proceeding in spite of Section 265.

We think it quite clear, however, that an injunction against the person is an exercise of purely *in personam* jurisdiction. It is equally clear that the federal court in Missouri had nothing but purely *in personam* jurisdiction. The conflict between courts was solely a conflict between their respective *in personam* jurisdictions. This being the case, the mere fact that jurisdiction was first acquired by the federal court in Missouri did not, under the rule of comity, take away or destroy the jurisdiction of the Tennessee court, or render its judgment void, or take the case out of the prohibition of Section 265 and authorize the district court to retort by enjoining the proceeding in the Tennessee court.

Where there is no statutory denial of the right to enjoin proceedings in another court, as where a state court enjoins parties before it from proceeding in federal courts or in other state courts, or where one federal district court enjoins parties before it from proceeding in another federal district court, the personal restraint on the parties against proceeding in the other court is not a direct interference with the other court and is not contrary to any rule of comity between courts. *Steelman v. All Continent Corp.*, 301 U. S. 278, 291, and cases cited.

Thus the Tennessee injunction was no direct interference with the federal court in Missouri. It was solely a personal restraint on respondent. No rule of comity forbade it or empowered the district court to retort by counter injunction. The Tennessee injunction was squarely within the doctrine of the *Steelman* case. The Tennessee court did not challenge the jurisdiction of the federal court in Missouri, "if the word jurisdiction be taken in its strict and

proper sense." (301 U. S. at 290.) Petitioner, in the Tennessee suit, sought "an injunction directed to a suitor, and not to any court, upon the ground that the suitor is misusing a jurisdiction which by hypothesis exists, and converting it by such misuse into an instrument of wrong." (301 U. S. at 291.)

But where the remedy of injunction is expressly denied by statute, as by Section 265 of the Judicial Code, where a federal court attempts to stay proceedings in the state court by restraining the parties from further proceeding, the fact that the restraint does not actually run to the state court itself but only to the parties does not take the injunction out of the prohibition of the statute. Clearly Section 265 forbids federal courts from restraining parties from further proceedings in suits in the state courts. *Diggs v. Walcott*, 4 Cranch 179; *Peck v. Jenness*, 7 How. 612; *Orton v. Smith*, 18 How. 263; *Haines v. Carpenter*, 91 U. S. 254; *Dial v. Reynolds*, 96 U. S. 340; *Lawrence v. Morgan's Railroad, etc., Co.*, 121 U. S. 634; *In re Chetwood*, 165 U. S. 443; *United States v. Parkhurst-Davis Mercantile Co.*, 176 U. S. 317; *Essanay Film Co. v. Kane*, 258 U. S. 358; *Kline v. Burke Construction Co.*, 260 U. S. 226; *Kohn v. Central Distributing Co.*, 306 U. S. 531; *Oklahoma Packing Co. v. Oklahoma Gas Co.*, 309 U. S. 4; *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U. S. 270, 274.

All those cases involved federal injunction merely restraining the parties from proceeding in state court suits but all held that Section 265, or its predecessor statutes, denied the injunction power to the federal courts.

It follows from all the foregoing that the Tennessee court was not without jurisdiction and its injunction was not void; that the district court below should have given it full faith and credit; that the injunction by the district court, restraining petitioner from enforcing the Tennessee injunction and commanding it to dismiss the Tennessee equity suit and set it at naught, was a violation of Section 265, and was not within any of the judicial exceptions that have been "engrafted" on that section.

IV.

**Even if the Tennessee Injunction Decree was Erroneous,
the Federal District Court Could Not Entertain a Col-
lateral Attack Upon It and Treat It as Absolutely Void.**

The Tennessee court had jurisdiction by personal service of respondent, a Tennessee resident. Even if its injunction was erroneous, as a violation of some rule of comity between courts, it could only be corrected on a direct review. It was not absolutely void for want of jurisdiction and hence subject to collateral attack. If the legality of the Tennessee court's action was to be questioned, it could have been done only by laying the proper foundation through appropriate proceedings in that court, and then by appellate proceedings. The Tennessee injunction could not be collaterally attacked in the federal court. Nor could it be ignored. *Lion Bonding Co. v. Karatz*, 262 U. S. 77, 89-90.

But respondent took no appeal from the Tennessee injunction. She attacked it collaterally in the district court. And that court entertained the collateral attack and undertook to set the Tennessee decree aside as void. This was plainly error and a denial of required full faith and credit. Article IV, section 1, Constitution of the United States; 1 Stat. 122, as amended, 28 U. S. C. 687.

CONCLUSION.

Upon all the foregoing, we submit that the decision below should be reversed.

Respectfully submitted,

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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

October Term, 1941

No. 24

SOUTHERN RAILWAY COMPANY, *Petitioner*,

v.

ELMER PAINTER, ADMINISTRATOR OF THE ESTATE OF GEOFFREY
L. PAINTER, DECEASED, *Respondent*.

On Writ of Certiorari to the United States Circuit Court of
Appeals for the Eighth Circuit.

REPLY BRIEF FOR PETITIONER.

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IN THE
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October Term, 1941.

No. 24.

SOUTHERN RAILWAY COMPANY, *Petitioner*,

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On Writ of Certiorari to the United States Circuit Court of
Appeals for the Eighth Circuit.

REPLY BRIEF FOR PETITIONER.

STATEMENT.

The statement of respondent's brief (p. 2), while admitting that the statement contained in our brief is "not inaccurate in so far as it goes," asserts that our statement "has been so shortened as to omit many facts which we believe must be given consideration in order to arrive at a correct decision of this case."

Respondent, thereupon, sets out in her statement eleven pages of *minutiae* as to details of pleadings and procedural steps, both in the federal district court below and in the Tennessee equity suit, but which adds to the facts contained in petitioner's Statement nothing material to the questions of law upon which certiorari was granted.

The *minutiae* added by respondent have no significant bearing on the question whether the injunction issued by the Tennessee court was absolutely void for want of jurisdiction, the proposition which respondent must maintain as her major premise if she is to prevail, but could only have bearing on questions as to whether that injunction might be voidable for error in its scope and range. Obviously such questions could only be reviewed by a direct review of the Tennessee judgment, *Lion Bording Co. v. Karatz*, 262 U. S. 77, 89-90, and cases cited.

Respondent cannot prevail here by establishing that there was error in the Tennessee injunction decree. She made no appearance in the Tennessee suit. She made no effort to secure correction of the judgment if there was error in its scope or error in its substance. She made no effort to secure direct review of that judgment by appellate proceedings in the Tennessee courts and by certiorari here, as was done in No. 20, *Baltimore & Ohio R. Co. v. Kepner*.

The Tennessee injunction is *res judicata* and binding on respondent *unless* she can maintain the proposition, which indeed is the main premise of her argument, that the Tennessee equity court was absolutely without jurisdiction of the matter before it, so that its judgment was absolutely void, as distinguished from voidable or erroneous, and so that it could therefore be safely disregarded and her rights rested solely on a collateral attack upon it in the federal district court in Missouri.

While respondent does assert that the Tennessee decree was absolutely void for total lack of jurisdiction and makes that proposition the major premise of her argument, yet we think her argument falls far short of establishing that premise. And running *sparsim* throughout her brief are

subsidiary and supposedly supporting arguments which can bear only on questions of *errors* in the Tennessee judgment, which, if errors, could only give it a character voidable or reversible on a direct review, which respondent has not sought. Such questions are not before this Court. Such arguments are entirely wide of the mark of the case here raised.

Some of such arguments are: that some of the grounds for injunction alleged in petitioner's complaint in the Tennessee injunction suit, other than the ground of inequitable hardship and oppression, may have been unfounded (Respondent's brief, 21); that the Tennessee injunction may have been too highly restrictive in its scope (*Ibid.*, 21, footnote); and that it would have been almost as much hardship upon petitioner to have been sued by respondent in the federal court in the district of petitioner's residence (Richmond, Virginia) as in the district court below in the eastern district of Missouri (*Ibid.*, 22).

Similarly without any pertinence to the questions here raised is the argument of Point V, the last point of respondent's brief (pp. 69-72), based on the fact that respondent is now barred of recovery under the Liability Act in all jurisdictions, state and federal, except in the district court in Missouri below. We shall answer that argument in the last section of this reply and show that that situation is solely the result of the determination of respondent and her counsel to disregard the Tennessee suit and the failure of her counsel to protect her *pendente lite* by suit to toll the statutory limitation in one of the jurisdictions in which she was left by the Tennessee injunction entirely free to sue, a course directly opposite to that followed by counsel for respondent in the *Kepner* case.

ARGUMENT.

I.

Introductory.

Respondent's argument starts (brief, 15) with a confident assertion that there are no conflicting principles to be harmonized in arriving at the true rule to govern this case and that the controlling principles and their exceptions are well settled. The implication is that there is no conflict between the various decisions of this Court on questions of conflict between state and federal courts, from 1793, when the prototype of Section 265 of the Judicial Code was first enacted, down to date, and that the questions here raised are already decided and controlled by a uniform and harmonious line of historical decisions.

Unfortunately, or fortunately, such is not the nature of the judicial process or of the development of the law. With great respect be it said, there are conflicts between the earlier and later decisions of this court and many of those conflicts have not yet been reconciled. Precedents which have stood for nearly a hundred years and have been followed in hundreds of decisions (*Swift v. Tyson*, 16 Pet. 1) have been uprooted in a day (*Erie R. Co. v. Tompkins*, 304 U. S. 64).

When respondent quotes and grounds her argument on the broad and strong language of the majority in *Riggs v. Johnson County*, 6 Wall. 166, 195-196, as she does on page 31 of her brief, we cannot overlook the fact that the whole basis of the philosophy and decision in that case, as in the other "county bond cases," *Gelpcke v. Dubuque*, 1 Wall. 175, and *Weber v. Lee County*, 6 Wall. 210, has now fallen under the impact of *Erie R. Co. v. Tompkins*, 304 U. S. 64. *Riggs v. Johnson County* stands in effect overruled. Whether any vitality remains in the dissertations which the majority there made on the rule of comity between state and federal courts is now of the highest dubiety.

The fact of the matter is that the precise questions presented in our case have never been decided by this Court.

The precise questions are not even presented in *Baltimore & Ohio R. Co. v. Kepner*, No. 20, although one question closely similar to one of our questions is there presented. The *Kepner* case does not involve a death action by a state appointed administrator, or the question of the power of the state of appointment to restrain such state officer from exporting a cause of action to another state. The *Kepner* case does not involve a collateral attack in the federal court on an injunction issued by the state court. It comes up by orderly, direct appeal. And finally it involves no questions of federal court injunction or of violation of Section 265 of the Judicial Code.

But when three circuit judges of the second circuit in *Bryant v. Atlantic Coast Line R. Co.*, 92 F. (2d) 569, decided the same questions raised in our case (minus the strengthening state administrator angle of the problem) directly contrary to respondent's contentions, and especially when four members of this Court of eight at the last term voted for reversal in the *Kepner Case*, 312 U. S. (Adv. No. 1)ii, thus necessarily believing the fundamental basis of respondent's argument to be erroneous, it is difficult to understand respondent's assertion that the questions raised in our case are settled and controlled by "a few well-settled principles, and the well-settled exceptions to those principles." (Brief, 15).

II.

The Liability Act, the Amendment of 1910 as to Venue, and the Legislative History of that Amendment Indicate no Congressional Purpose to Give Plaintiffs the Absolute and Unrestrainable Right to Shop Around to Find the Most Distant, Harrassing and Vexatious District in Which the Carrier is Doing Business or the One in Which Verdicts May Be Largest.

The references which respondent's brief makes (pp. 16-18) to statements during debate on the bill which became the amendment of 1910 to the Liability Act (Act of April 5, 1910, 36 Stat. 291) do not at all tend to support respondent's main premise, that the jurisdiction of a federal district court

of an action under the Act, once invoked and having attached, was intended by Congress to be, or is, absolutely exclusive of all jurisdiction of state courts, particularly of the courts of the state of the residence and appointment of a personal representative, to enjoin the further prosecution of such suit in such federal court by such personal representative. The quoted statements in debate have no reference to that proposition.

Nor do they in any way have bearing on the cognate question whether Congress intended by the 1910 amendment, or whether the amendment had the effect, to except from the operation of Section 265 of the Judicial Code every case in which the jurisdiction of a federal district court of an action under the Liability Act has been invoked and has attached, so as not only to *enable* the federal court in every such case, but indeed to *require* it, to protect its jurisdiction by injunction to stay any subsequent proceedings in state courts to restrain the party from further proceeding in the federal court. Respondent's case depends on establishing the affirmative of that proposition.

Indeed the whole tendency of everything quoted from the debates on the 1910 amendment is limited to showing the intention thereby to broaden the venues to which a plaintiff might resort in suing under the Act, so as to make it more convenient for the plaintiff to bring suit. There is no need to resort to debates to discover that intention. It is obvious from the amendment itself.

Section 6 of the Liability Act has been amended only three times. It may be well to trace its history.

As it stood in the original Second Federal Employers' Liability Act, the Act of April 22, 1908, 35 Stat. 65-66, section 6 merely provided:

"That no action shall be maintained under this Act unless commenced within two years from the day the cause of action accrued."

No express jurisdiction was conferred on either state or federal courts. There was no provision for concurrent

jurisdiction. There was no provision against removal. There was no venue provision. As to venue of actions in federal courts, that was left to be controlled by the general venue statute, which provided that a defendant could only be sued in the district of his residence, with the exception that if jurisdiction of the federal court was based solely on diversity of citizenship, the venue could be either in the district of the residence of the plaintiff (if the defendant could be found doing business there) or in the district of the residence of the defendant. Where the action was under the Liability Act jurisdiction of federal courts was not based solely on diversity of citizenship, hence such actions could not be maintained in the district of the residence of the plaintiff, even if the carrier was doing business there, unless that happened to be also the district of the residence of the defendant.

That act was a hardship on the plaintiff desiring to sue in the federal court. He could only sue in the district in which the railroad was chartered and that might be hundreds of miles away from the plaintiff's home.

The first amendment of section 6 of the Act was by the Act of April 5, 1910, 36 Stat. 291, which changed section 6 so as to read as follows:

"That no action shall be maintained under this Act unless commenced within two years from the day the cause of action accrued.

"Under this Act an action may be brought in a circuit court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this Act shall be concurrent with that of the courts of the several States, and no case arising under this Act and brought in any State court of competent jurisdiction shall be removed to any court of the United States."

By the same Act of 1910, there was added to the Liability Act a new section 9 which provided for the survival of

actions in case of death to the "personal representative" for the benefit of certain named beneficiaries. (45 U. S. C. 59).

By the Judiciary Act of March 3, 1911, ch. 231, sec. 291, 36 Stat. 1167, the words "circuit court" in section 6, as amended by the Act of 1910, were changed to "district court."

By the Act of August 11, 1939, ch. 685, sec. 2, 53 Stat. 1404, the limitation period for suit in section 6 was changed from two years to three years.

It is obvious upon its face, and without the necessity of resort to debates on the floor of Congress, that the amendment of 1910 to section 6 of the Act had the following purposes:

1. To broaden the available venue for suits in the federal courts, so as to make it more convenient for plaintiffs to sue and get service;

2. To make it clear that the federal courts did not have exclusive jurisdiction of actions under the Act (as some courts had erroneously supposed under the original Act) but that their jurisdiction was only "concurrent" with that of "the courts of the several States";

3. And to express a congressional preference for the jurisdiction of the state courts by forbidding the removal to the federal courts of any case under the Act brought in "any State court."

Since the original Act, read in conjunction with the general venue statute, although authorizing suit in the federal court in the district of the residence of the *defendant*, did not authorize like suit in the district of the residence of the *plaintiff*, and hence since plaintiff could not bring suit in the federal court in the district of his own residence *even if the defendant railroad did business in that district*, it seems obvious that the real purpose of the amendment in enlarging venue was to enable the plaintiff to sue the carrier

in the federal court in the district of plaintiff's own residence, if the carrier was doing business in that district, or, if it was not doing business in plaintiff's district, then to enable plaintiff to sue in some convenient nearby district in which the carrier was doing business, or in the district of the residence of the carrier or where the cause of action arose, if that be more convenient to the plaintiff.

It is still true, under the section as at present written and after all amendments, that there is no authorization in terms for the suit to be brought in the district "of the residence of the plaintiff" and the only way a plaintiff can resort to the federal court in the district of his residence is under the provision for suit in *the* district "in which the defendant shall be doing business at the time of commencing such action" if the carrier be doing business in plaintiff's district.

But while the venue amendment was adopted to enable the plaintiff to sue in a convenient federal district in which the carrier is doing business, so that the plaintiff need not go to a great distance to obtain service and take his witnesses a great distance for the trial, yet there is nothing in the amendment or in the legislative history to indicate that it was any part of the congressional purpose not merely to contribute to the convenience of the plaintiff but to punish the carrier or to put in the hands of plaintiff the powerful instrument of harassment and vexation of having an absolute and uncontrollable election to drag the carrier for trial to *any* most distant district in which it might be doing business, most distant from the district of the residence of the plaintiff as well as from that of the residence of the carrier and most distant from the district in which the cause of action arose or in which the witnesses lived.

Nothing indicates any congressional purpose to enable plaintiffs to convert the shield of protection and convenience into a sword of harassment, vexation and oppression, by shopping around at their uncontrollable pleasure to find the most distant federal district in which the carrier is doing business, or even the district in which by reason of purely

local conditions, wholly unrelated to the Act's purpose to give a uniform federal remedy, juries are in a habit of giving the largest verdicts

No such purpose is disclosed by the statements in debate quoted by respondent. Such purpose is negatived by the fact that Congress did not use the word "any," was careful not to give the provisions even the appearance of authorization to the plaintiff to shop around at his unrestricted discretion to select "any" of the many districts in which a large railroad might be doing business and which might be more favorable for large recoveries than the others.

Any such purpose is negatived by all the quotations respondent makes from the debates. It is negatived by the message of President Taft of January 7, 1910, urging the passage of the amendment (Congressional Record No. 45, Part 4, p. 4041). The President said:

"The question has arisen in the operation of the interstate commerce employers' liability act as to whether suit can be brought against the employer company in any place other than that of its home office. The right to bring the suit under this act should be as easy of enforcement as the right of a private person not in the company's employ to sue on an ordinary claim, and process in such suit should be sufficiently served if upon the station agent of the company upon whom service is authorized to be made to bind the company in ordinary actions arising under state laws. Bills for both the foregoing purposes have been considered by the House of Representatives, and have been passed, and are now before the Interstate Commerce Committee of the Senate. I earnestly urge that they be enacted into law."

And such purpose is also negatived by the report of the Senate Committee on Judiciary submitted by Senator Borah (Ibid., p. 4040) where it was said:

"This amendment is necessary in order to avoid great inconvenience to suitors and to make it unnecessary for an injured plaintiff to proceed only in the jurisdiction in which the defendant corporation is an 'inhabitant.'

"This is held by the courts to be the jurisdiction in which the charter of the defendant corporation was issued. This may be at a place in a distant State from the home of the plaintiff, and may be a thousand miles or more from the place where the injury was occasioned.

"The extreme difficulty, if not impossibility, of a poor man who is injured while in railroad employ, securing the attendance of the necessary witnesses at such a distant point makes the remedy given by the law of little avail under such circumstances.

* * * * *

"No argument is necessary to convince that this is a grave injustice to the plaintiff.

"Such an embarrassing situation ought not to be permitted to exist where any plaintiff is proceeding in a Federal court on a right based on the law of the United States.

"But to permit it to be a practical barrier to the maintenance of an action for death or personal injuries of employees who may be presumed to be unable to meet the expense of presenting this case in a jurisdiction far from their homes would be an injustice too grave and serious to be longer permitted to exist."

There is an insinuation contained in a statement on page 26 of respondent's brief which we are quite willing to bring into the open and meet frankly and head-on. It is there said by respondent that "there seems ample reason to assume that there is some good reason from the standpoint of petitioner railway, which will result in a *profit* to it and in a corresponding *loss* to this petitioner (*sic*, meaning respondent) and the dependents of her decedent, for its strenuous effort to prevent the trial of respondent's action under the act in the district court in Missouri, and, instead, to have the trial of that action held in the limited areas of Tennessee or North Carolina prescribed by the Tennessee state court's injunction." (Italics and matter in parentheses ours.)

There is a good reason for petitioner's efforts. It is this. No proper purpose of the convenience of plaintiff-respondent in obtaining service on petitioner railroad and in securing trial in a federal district convenient to the place of her

residence, within the congressional purposes of the Amendment of 1910, is served by respondent's resort to the distant district in Missouri. That district is inconvenient to respondent as well as to petitioner, far more inconvenient than the district in Tennessee in which she resides or the district in North Carolina in which the cause of action arose. Only one or both of two possible reasons could have been the motivating reason for her selection of the distant venue in Missouri: (1) convenience of or advantage to her Missouri counsel and inconvenience and hardship to petitioner railroad; or (2) that it is believed that juries in Missouri, by reason of local conditions in that state, remote from respondent's residence, will give larger verdicts than would juries in North Carolina or in Tennessee.

Neither of those reasons is within the congressional purposes. This was clearly in the mind of Mr. Justice Brandeis when he said in his dissent in *New York Central R. Co. v. Winfield*, 244 U. S. 147, at 168-169:

"We are admonished also by another weighty consideration not to impute to Congress the will to deny to the States this power. The subject of compensation for accidents in industry is one peculiarly appropriate for state legislation. There must, necessarily, be great diversity in the conditions of living and in the needs of the injured and of his dependents, according to whether they reside in one or the other of our States and Territories, so widely extended. In a large majority of instances they reside in the State in which the accident occurs. Though the principal that compensation should be made, or relief given, is of universal application, the great diversity of conditions in the different sections of the United States may, in a wise application of the principle, call for differences between States, in the amount and method of compensation, the periods in which payment shall be made, and the methods and means by which the funds shall be raised and distributed. The field of compensation for injuries appears to be one in which uniformity is *not* desirable, or at least not essential to the public welfare."

We think the question might be better addressed to respondent: why is it that she, a resident of Tennessee, a state appointed administratrix in Tennessee, whose intestate was killed just over the State line in North Carolina, the place of residence and appointment and the place where the death occurred being right in the middle of petitioner's railroad through the southeast, where there are good courts, state and federal, and good lawyers to vindicate her rights, so persistently refuses to litigate in the very section where she lives and where service of summons and trial is most convenient and where all the witnesses live, but goes to the far, trans-Mississippi state of Missouri to sue entirely outside her own and petitioner's southeastern territory?

The only answer is that given by the equity court in Tennessee, her purpose is to impose hardship on petitioner and to get some advantage over it which she does not conceive she can accomplish in her own territory, in the state or federal courts in Tennessee or North Carolina.

It is not within "those considerations which are persuasive of the statutory purpose" that the Liability Act intended to promote such purposes.

III.

The Well Settled Rule Whereby Courts of a State Will Enjoin Its Residents from Inequitable Resort to Suits in Other Jurisdictions Must Have Been Known to Congress When it Passed the Amendment of 1910. It Should Not be Held to Have Intended to Nullify that Rule as to Actions Under the Liability Act, in the Absence of Any Expression or Indication of Such Intention.

When Congress passed the 1910 amendment to the Liability Act it must have been familiar with the well recognized power of courts of the several states to restrain their respective citizens from inequitable resort to the courts of other jurisdictions on transitory causes of action. It must have been familiar with the line of cases represented by *Cole*

v. *Cunningham*, 133 U. S. 107, and *Dehon v. Foster*, 4 Allen (Mass.) 545, and the other cases cited on page 16 of our main brief.

This being so, if Congress, by the passage of the 1910 amendment to the Liability Act, had intended to take cases brought under the Liability Act out of that generally recognized rule, or to take away from the courts of the several states the power, which otherwise plainly exists, to enjoin their respective residents on equitable grounds from exporting such actions to other jurisdictions, we should expect in the Liability Act some expression of such intention.

Nothing in the Act expresses such intention. Nothing in the purposes of the Act or in its legislative history evidences such intention. Nothing in the considerations which are persuasive of the statutory purpose leads to the conclusion that Congress intended in any such fashion to trench on state power.

Under the principles of *Sinnot v. Davenport*, 22 How. 227, 243; *Reid v. Colorado*, 187 U. S. 137, 148; and *Maurer v. Hamilton*, 309 U. S. 598, 614; we do not believe that the Liability Act can be construed to have taken away that state power.

IV.

The Decisions Are Abundant Holding that the Courts of the State of Residence of the Plaintiff Have the Power to Enjoin Inequitable Exportation of Causes of Action Under the Liability Act to Courts of Distant States. No Reasons Exist Why the Same Power Should Not Exist to Prevent Exportation to Federal District Courts in Distant States. In Either Case the Distant Court Has Jurisdiction Under the Act of Congress.

The court below in its opinion (R. 82-83), on authority of *Ex Parte Crandall*, 53 F. (2d) 969, recognized that courts of the state of residence of the plaintiff have the power to enjoin exportation of suits under the Act to state courts of other states, on grounds of equity. It said:

“The railway company contends that the jurisdiction which the Congress conferred on the federal courts to try actions brought under the Federal Employers’ Liability Act is subject to a qualification which must be implied, that Congress intended that any suit prosecuted under the Act in a state other than that of plaintiff’s domicile might be halted by a court of the domicile, if it should appear that the suit prosecuted under the Act was oppressive and brought to secure an inequitable advantage from misuse of the Act’s provisions for choice of venue. Such a qualification has been implied, but only to the extent that Congress conferred the privilege of bringing suits under the Act in state courts. In *Ex Parte Crandall*, 53 F. 2d 969, the Circuit Court of Appeals for the Seventh Circuit indicated that the qualification existed and held that habeas corpus should not be granted to an Indiana citizen who violated an injunction of an Indiana court forbidding her to litigate an action brought under the Federal Employers’ Liability Act in a state court of Missouri. * * *

The court below also recognized (R. 81) that the same holding was made in *Louisville & Nashville R. Co. v. Ragen*, 172 Tenn. 593, 113 S. W. (2d) 743; *Reed’s Administratrix v. I. C. R. Co.*, 182 Ky. 455, 206 S. W. 794; *Chl. M. & St. P. R. Co. v. McGinley*, 175 Wis. 565, 185 N. W. 218; *N. Y. C. & St. L. R. Co. v. Matzinger*, 136 Oh. St. 271, 25 N. E. (2d) 349; *N. Y. C. & St. L. R. Co. v. Norton*, 331 Mo. 764, 55 S. W. (2d) 272, in each of which cases injunctions by the courts of the state of the residence of plaintiff restraining the plaintiff from prosecuting an action under the Employers’ Liability Act in the courts of another state were held valid.

The situation was sharply presented in *N. Y. C. & St. L. R. Co. v. Norton*, *supra*. There death occurred in Indiana. The deceased was a citizen and resident of Indiana, as was his widow. The widow was appointed administratrix by Indiana courts. She undertook to export her cause of action to Missouri and to sue under the Federal Employers’ Liability Act in the Missouri state courts. The railroad secured an injunction in the Indiana court against her prosecution of the action in Missouri. She disregarded the Indiana in-

junction and prosecuted her Missouri suit to judgment. The railroad then moved the Indiana court for a contempt citation against her, which was issued. She then moved the Missouri court and obtained its injunction enjoining the railroad from prosecuting the Indiana contempt citation. The railroad then petitioned the Missouri Supreme Court for a writ of prohibition to prohibit the Missouri circuit court from enforcing its injunction against the railroad and from entertaining jurisdiction of the injunction. The Missouri Supreme Court recognized the power of the court of Indiana, the state of residence and appointment of the administratrix, to enjoin her from exporting her suit to Missouri and from maintaining it there. It made a provisional writ of prohibition absolute. It said (55 S. W. 2d at 273):

“It is settled law that, in a proper case, a court of equity having jurisdiction of the person may enjoin such person from prosecuting a suit in a foreign jurisdiction. By a ‘proper case’ we mean that the party seeking such an injunction must make a clear showing that it would be inequitable, unfair, and unjust to permit the prosecution of the suit in a foreign jurisdiction.
• • • • •”

We think the opinion below approved this rule whereby the courts of a state can enjoin a resident on equitable grounds from prosecuting an action under the Federal Employers' Liability Act in the courts of another state. We think respondent (brief, bottom 33-34) implicitly admits the rule. The court below held and respondent contends that the rule is different where the suit in the distant state is brought in a federal district court instead of in a state court.

The theory is that there is some peculiar virtue in the jurisdiction which a federal district court exercises under an act of Congress which makes it sacrosanct, different from the jurisdiction which a state court exercises under an act of Congress.

We do not perceive the basis of the distinction. Where a state court takes a case under the Liability Act it is acting pursuant to a jurisdiction given by act of Congress just as

much as is a federal court. "Lower federal courts are not superior to state courts." *Lion Bonding Co. v. Karatz*, 262 U. S. 77, 90.

There is the distinction, of course, that state courts are creatures of state sovereignty while federal courts are creatures of federal sovereignty. But that distinction, we think, does not go to the point now argued.

While Congress has not attempted to compel states to provide courts for the enforcement of the Liability Act, but has only empowered them to do so, so far as the authority of the United States is concerned, *McKnett v. St. Louis & S. F. Ry. Co.*, 292 U. S. 230, 233, *Douglas v. New York, N. H. & H. R. Co.*, 279 U. S. 377, 387, yet where the state has provided courts having general jurisdiction over liability cases, the Federal Constitution and the Liability Act require that such state courts must entertain jurisdiction of Liability Act cases and they cannot, even under a state policy, refuse to exercise such jurisdiction, because to so refuse would be to discriminate against rights arising under federal laws. *McKnett v. St. Louis & S. F. Ry. Co.*, *supra*, at 233-234.

Congress could have conferred exclusive jurisdiction on the federal courts, and the state courts would then have had no jurisdiction, regardless of state constitutions and laws. Congress has not done so, but has conferred concurrent jurisdiction on state and federal courts and the state courts, under federal law, cannot refuse the jurisdiction if the state has created apt courts for similar liability cases. And in the exercise of that jurisdiction the substantive federal law is controlling on the state courts, regardless of conflicts with state laws.

So it is seen that the jurisdiction of state courts under the Act is conferred by act of Congress in just as real a sense as is the jurisdiction of the federal district courts.

Now if the mere fact that a court has jurisdiction under an act of Congress and that that jurisdiction has been invoked in a pending suit is sufficient to make that jurisdiction exclusive of all power of any other courts, not only to interfere directly with the process and proceedings of that

court, but even to impose *in personam* restraint on a party to that suit, and to authorize that court to issue a counter-injunction, then no reason is perceived why the jurisdiction of state courts under the Act is not just as exclusive of all forms of interference by other courts as is the jurisdiction of federal courts. Both courts, state and federal, are given their jurisdiction by act of Congress.

Where a plaintiff has brought an action in a state court under the Liability Act he is acting in the prosecution of a federal right just as much as is a plaintiff bringing such an action in a federal district court. Just why the latter should be held to be wholly free from the power of his state of residence to restrain him, while the former remains subject to such power, we are unable to see.

V.

To Affirm the Court Below this Court Would Have Virtually to Repeal Section 265 of the Judicial Code by Judicial Construction, by so Expanding Judicial Exceptions to it as to Make the Exceptions Virtually Co-Extensive with the Rule.

Respondent on brief (pp. 18-19) strongly invokes the rule that the courts have no responsibility for the justice or wisdom of legislation, that their duty is to enforce a plain and unambiguous statutory provision regardless of any hardship which such construction may impose.

The application which respondent makes of those rules is curious. Her brief asserts (p. 18), "In direct and simple language the Congress by this provision of the Act gave the plaintiff in an action under the Federal Employers' Liability Act the right to institute and maintain an action in the federal court *of any* district in which the defendant was doing business at the time the action was commenced." (Italics ours.)

The italicized words "of any" do not appear in the statutory provision. In order to give the provision the "direct and simple" meaning attributed to it respondent actually

has to read into the statutory language words which Congress did not write in it.

Then it is asserted (brief, p. 19) that "For the courts to create ambiguity and implied qualifications in the clear and unequivocal language of this provision of the Act, so as to make plaintiff's right of selection of the forum in which to bring his action dependent upon matters of inconvenience, expense, or burdensomeness to the defendant, would be to amend that provision of the Act by judicial construction, rather than to interpret it."

Of course, language in a statute is not clear and unequivocal within the meaning of the rule of construction invoked by respondent when, in order to give the statute the meaning she asserts it to have, respondent is forced to read into it words which Congress did not write into it.

But respondent overlooks the fact that Section 265 of the Judicial Code is likewise an act of Congress and one of the oldest we have in the books, that its language is as clear and unambiguous as the English language can be, and that to restrict it as respondent's theory of the law would require it to be restricted, the Court would have to engraft upon it by judicial construction a broad exception, far broader than any heretofore engrafted upon it, and so broad as to be virtually co-extensive with the prohibition.

If respondent's argument is sound, then Section 265 does not mean what its plain language says but it must be construed as if it read:

The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunctions may be authorized by any law relating to proceedings in bankruptcy, and except that in any case in which the jurisdiction of a court of the United States has first attached then such court shall have full power by injunction to stay any subsequent proceeding in any state court which may conflict or interfere with the exercise of the jurisdiction of said court of the United States or which may have for its purpose the restraint of a party from further proceeding in said case in said court of the United States.

The italicized language or its substantial and effective equivalent, and all of it, must be read into Section 265, to make it accommodate the theory of the law presented by respondent's brief and by the opinion of the court below.

Certainly this Court has never yet written into Section 265 any such broad exception as that. If it does now, it will have to make entirely new law, entirely without precedent, when Congress has not seen fit to add any new exception to the prohibition of the Act of 1793 since it wrote into it the express bankruptcy exception in 1873 (Section 720 of the Revised Statutes), except that in the Interpleader Act and perhaps other acts it has authorized a particular injunction which, of course, does not fall within the prohibition of Section 265. *Treinies v. Sunshine Mining Co.*, 308 U. S. 66, 74.

The theory of the court below, and it was a theory necessary to its decision, and the theory of respondent's brief here, and it is a theory necessary to sustain respondent's position here, is just that above stated in the italicized exception which would have to be read into Section 265. It is that wherever jurisdiction of a federal court has first attached, then it is the absolute right and duty of such court to proceed to judgment, that it has no discretion to refuse to exercise jurisdiction or to yield it up in favor of another jurisdiction, and that in any such case it has not only full authority but the duty to protect its jurisdiction by injunction to stay proceedings in state courts, not only where such proceedings directly interfere with the jurisdiction, proceedings or process of the federal court, but also where they merely restrain a party from further proceeding in the federal court, and this without regard to any distinction between conflict *in rem* or *quasi in rem* and conflict only *in personam*, and in spite of Section 265.

But lower federal courts are not created by the Constitution. They are statutory courts and courts of limited jurisdiction, with only the jurisdiction which Congress has prescribed. *Chicot County Dist. v. Bank*, 308 U. S. 371, 376.

It follows that no lower federal court can ever act in any case *except where it has jurisdiction conferred upon it by act of Congress*. If the existence of jurisdiction under an act of Congress in a lower federal court *ipso facto* takes away from state courts all power to restrain parties to the federal suit and takes the case out of Section 265, so that the federal court can issue counter-injunctions to stay parties from injunction proceedings in state courts, then virtually every case in which a federal court can act at all is excepted from the prohibition of Section 265 and the exception becomes coextensive with the prohibition. If this be the law, the prohibition is a dead letter, in spite of its nearly 150 years of supposed life.

To be strictly accurate we should say that the theory of the court below and the theory of the respondent here apparently is limited, although we think its implications are not necessarily so limited, to the exclusiveness of federal court jurisdiction against any form of state court interference, either with the federal court itself or with the parties, *where jurisdiction of the federal court has been invoked and has attached prior to the invoking of state court jurisdiction*.

If this be the limit of the theory, and if it be here approved as law, then Section 265 can have no application in any case except to prohibit a federal court from granting injunction to stay proceedings in any court of a State where the proceeding in the state court was started before the proceeding in the federal court.

If that beautifully simple test be sound, then many difficult decisions of this Court over the 150 years under Section 265, and much of the learning over which the Court has labored, amount to futile tilting at windmills. All such cases should have been disposed of by applying the simple test whether the federal proceeding started first or whether the state court proceeding started first. If the former, then the prohibition of Section 265 does not apply. If the latter, the prohibition may apply.

It seems a pity that the Court had not discovered such an easy and magic formula back as far as *Diggs and Keith v. Wolcott*, 4 Cranch 179 (1807). That case, by the way, is a model for brevity of opinion. It was there said:

“The case was argued upon its merits by C. Lee and Swann for the appellants, and by P. B. Key, for the appellee; but *the court* being of opinion that a circuit court of the United States had not jurisdiction to enjoin proceedings in a *state* court,

“Reversed the decree.”

If respondent's view of the law be sound, all subsequent decisions under Section 265 might readily have been disposed of by opinions of equal terseness.

VI.

To Affirm the Court Below, this Court Must Reject the Distinction Between Conflict In Rem or Quasi In Rem and Conflict Only In Personam, so Carefully Elaborated in *Kline v. Burke Construction Co.*, Repeatedly Reaffirmed by Recent Decisions, and Recognized by Congress in Recent Legislation.

We recognize that, as often stated by this Court, Section 265 of the Judicial Code must be read in connection with Section 262. But, so reading them, we cannot avoid seeing that while Section 262 is a grant of power to the federal district courts to issue writs of *scire facias* and “all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law,” yet Section 265 is an express and direct limitation upon Section 262 and Section 262 cannot be construed to whittle down and attenuate the limitation imposed on it by Section 265, because it is upon Section 262 that the very prohibition of Section 265 is a limitation. It would be lifting by bootstraps to construe the grant in diminution of the express restriction on, and exception to, the grant.

So we come back to the ingenious formula which the court below discovered for resolving all the complicated questions of conflict between courts and of rules of comity. It has the same illusory, mathematical exactness as the magic formula which, in the next preceding point of this brief, we suggested as the necessary result of respondent's argument.

"The balance between Sections 262 and 265 of the Judicial Code," said the court below, "lies at the point where one court interferes with the other. Neither state nor federal court has jurisdiction to enjoin the other except where one interferes with the province of the other, then the court interfered with has the exclusive jurisdiction to prevent the interference." (R. 91).

That is a pretty formula and would seem just as practicable and workable as the formula suggested, in our next preceding point above, as the necessary result of respondent's argument. Indeed it is a kind of paraphrase of that formula. One trouble about it is, however, that it needs definition of its terms. Just when does one court interfere with the other? Unless we know the answer, we cannot prick out the line between Sections 262 and 265, in spite of the apparent neatness of the formula of the court below. When does one court "interfere with the province of the other"? Unless we know, the formula still is meaningless.

And this necessarily throws us back to the distinction which this Court has uniformly drawn: that a state court does not interfere with a federal court where the action in each court is purely *in personam*; that the one court does not "interfere with the province of the other" where the action in each court is purely *in personam*, a suit against or a restraint solely upon the person or party, not directly against the other court or its process or proceeding; but that the one court interferes with the other, or with the other's province, only where there is an attempted direct interference with the process or proceeding in the other court or with a *res* or an action *quasi in rem* in the possession of the other court.

Thus a proceeding in a state court which is purely *in personam*, which makes no attempt directly to interfere with the process or proceeding in the federal court, and which makes no attempt to assume jurisdiction over a *thing* over which the federal court has already acquired jurisdiction *in rem* or *quasi in rem*, but only attempts to impinge upon a person or party, is not, according to this Court's decisions, an interference with the federal court or with its province, is not within the rule of comity authorizing the federal court to protect its first acquired jurisdiction by injunction, is not within any judicial exception which has been engrafted on the prohibition of Section 265.

It is not a distinction which we have invented. It is this Court's distinction, upon which it has spent laborious hours in opinions both before and since *Kline v. Burke Construction Co.*, 260 U. S. 226. The court below leapt over the distinction by saying that the Tennessee injunction suit directed solely to the person of respondent was not really an *in personam* action within the meaning of the rule of comity (R. 91) and respondent says of the distinction in effect that by referring to it we seek to read into the authorities a limitation on the exceptions to Section 265 which does not appear therein. (Brief, 63).

Let us look for a moment at the authorities. The distinction in question runs through them like a golden thread.

Diggs and Keith v. Wolcott, 4 Cranch 179 (1807), although it did not expressly refer to the Act of 1793, recognized no exception to its principle.

Peck v. Jenness, 7 How. 612 (1849), applied the prohibition in a bankruptcy matter, that being prior to the adoption of the express bankruptcy exception.

Orton v. Smith, 18 How. 263 (1856), applied the prohibition of the Act of 1793, without mentioning the Act, to forbid a federal court bill of peace to quiet title to land the title to which was in litigation in state courts. That would have been conflict *quasi in rem*.

Watson v. Jones, 13 Wall. 679 (1872), involved conflict quasi *in rem*, but where state court jurisdiction had first attached, and denied the federal court the injunction power, by reason of the prohibition of the Act of 1793.

Haines v. Carpenter, 91 U. S. 254 (1876), and *Dial v. Reynolds*, 96 U. S. 340 (1878), applied the prohibition of the Act of 1793 without recognizing any exceptions to the prohibition, except the express bankruptcy exception. In each of those cases conflict between courts was quasi *in rem* but in each the state court jurisdiction had first attached.

Moran v. Sturges, 154 U. S. 256 (1894), upon general language in which respondent strongly relies, did authorize federal injunction against state court interference, but there the state court was attempting to get possession of boats which the federal court had in its possession by libel in admiralty. The interference was plainly *in rem* and direct and the broad language of the opinion must be read in the light of that fact. It was plainly within the exception to the prohibition of Section 265 which we recognize and upon which we rely.

In the case of *In re Chetwood*, 165 U. S. 443 (1897), this Court applied the prohibition of the Act of 1793 where the federal court was attempting to interfere with an *in personam* proceeding in the state court but where the state court was not attempting to interfere with any *res* in the possession of the federal court.

In *White v. Schloerb*, 178 U. S. 542 (1900), federal injunction was sustained to prevent a state court from interfering with property in possession of a bankrupt under adjudication and for whom a referee had been appointed. This was *in rem* conflict and was also within the express bankruptcy exception to the prohibition of R. S. 720.

But in *Metcalf v. Barker*, 187 U. S. 165, and in *Pickens v. Roy*, 187 U. S. 177, both decided December 1, 1902, it was held that even in case of bankruptcy, but where the state courts had acquired jurisdiction *in rem* of the property prior

to the bankruptcy, the rule of comity between courts, as well as the prohibition of R. S. 720, (now Judicial Code Section 265) prevented federal injunction to interfere with the prior *in rem* jurisdiction of the state court.

In *Julian v. Central Trust Co.*, 193 U. S. 93 (1904), federal injunction was authorized to prevent state courts from interfering with title and possession of a purchaser under a federal court decree in a proceeding *in rem*. The federal court was merely protecting its *in rem* jurisdiction and the title of the purchaser under its final decree. *Gunter v. Atlantic Coast Line*, 200 U. S. 273 (1906), was a case of like character.

Looney v. Eastern Texas R. R. Co., 247 U. S. 214 (1918), on the broad language in which respondent strongly relies in our case, must be read in the light of the facts before the court. There the federal court had first acquired jurisdiction and had enjoined the state Attorney General from instituting suits against carriers for penalties for complying with an order of the Interstate Commerce Commission. The Attorney General started state court suits in contempt of the federal injunction. The federal court issued a further injunction to restrain further violation and this Court affirmed.

Wells Fargo & Co. v. Taylor, 254 U. S. 175 (1920), a case upon whose general language respondent very strongly relies, seems to us wholly out of harmony with *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, and we think it is now obsolete, destroyed by the erosion of time. In its ultimate effect it held that a federal district court had power, in spite of Section 265, to enjoin a party from collecting on a final judgment of a state court, on the federal court's holding that it would be contrary to general principles of equity and good conscience for him to exercise his legal rights under the state court judgment, a matter with which federal courts have no concern whatsoever since the *Erie Case*. We cannot regard generalities in its opinion as expressing sound law now.

In *Essanay Film Co. v. Kane*, 258 U. S. 358 (1922), it was held that suit in a federal court to enjoin defendant from further prosecuting a suit against the plaintiff in a state court, upon the ground that service of process in the state court was void as denying due process, is forbidden by Section 265. It distinguished *Simon v. Southern Ry. Co.*, 236 U. S. 115, on the ground that there the state court had proceeded to final judgment, but "without intimating that in other respects the cases are parallel."

In *Kline v. Burke Construction Co.*, 260 U. S. 226 (1922), this Court gave the leading exposition of the distinction between *in personam* actions in state and federal courts, where there is no direct conflict and where federal injunctions are forbidden by Section 265, and actions *in rem* or *quasi in rem* in the two courts involving the same *res*, where there is direct conflict and interference so as to come within the judicial exceptions to Section 265.

Lion Bonding Co. v. Karatz, 262 U. S. 77 (1923), carefully elaborated and reaffirmed the same distinction. It further forbade collateral attack in a federal court on a judgment of a state court, as also did *Wagner Co. v. Lyndon*, 262 U. S. 226 (1923), which case further seems to us to be in direct conflict with *Wells Fargo & Co. v. Taylor*, 254 U. S. 175, and to have in effect overruled it *sub silentio*.

In *Oklahoma v. Texas*, 265 U. S. 490 (1924), an original suit, this Court enjoined the plaintiff in a state court from suing a receiver appointed by this Court. Such suit would have interfered with this Court's *in rem* jurisdiction within the meaning of the distinction in *Kline v. Burke Construction Co.*, hence was not forbidden by Section 265.

In *Riehle v. Margolies*, 279 U. S. 218 (1929), it was held that even the appointment by the federal court of a receiver on a creditor's bill gives the federal court no right to stay a suit against the debtor in the state court to fix on him a liability *in personam*, that such state court suit was no interference with the federal court, that the judgment ren-

dered by the state court, even though taken by default, was *res judicata* and could not be collaterally attacked in the federal receivership. It reaffirmed *Kline v. Burke Construction Co.*

In *Munroe v. Raphael*, 288 U. S. 485 (1933), the federal court had jurisdiction *in rem*. It was held that federal court injunction to protect the *res* against state court interference was within the recognized exception to the prohibition of Section 265.

Penn Co. v. Pennsylvania, 294 U. S. 189 (1935) was a case in which the jurisdiction in *rem* of the federal court had first attached and the state court undertook to get possession of the *res*. Both courts enjoined. Section 265 was not involved directly because there was a direct review of the state court's judgment, no attempt at collateral attack upon it. This Court reaffirmed the distinction made in *Kline v. Burke Construction Co.* between suits *in personam* in the two courts, where there is no conflict, and suits *in rem* or *quasi in rem* where there is direct conflict. It held that, since the federal court had first acquired jurisdiction *in rem*, the state court was without power to interfere with the *res*. The plain implication was that if the federal jurisdiction had been merely *in personam* then the state court would not have been prevented from interfering. And even in that case this Court gave effect to the "doctrine of abstention" upon which we rely in our main brief (pp. 35-39) and suggested to the federal district court that it renounce its jurisdiction in favor of the state court.

Hill v. Martin, 296 U. S. 393, 403 (1935), held that the prohibition of Section 265 is comprehensive; that it includes all steps in the judicial process and is independent of the doctrine of *res judicata*; that it applies whatever the nature of the proceeding, unless the case presents facts which bring it within one of the recognized exceptions.

Princess Lida v. Thompson, 305 U. S. 456, 465-467 (1939), reaffirmed the *in rem* distinction drawn in *Kline v. Burke*

Construction Co., and re-affirmed in *Penn Co. v. Pennsylvania*.

Maryland Casualty Co. v. Pacific Coal & Oil Co., 312 U. S. 270, 274 (1941), where there was no conflict *in rem*, warned the federal district court that an injunction to stay parties from further proceeding in a state court was not authorized under Section 265.

In *Huron Holding Corp. v. Lincoln Mine Operating Co.*, 312 U. S. 183, 190, this Court disapproved a contention of the party stated by the Court as follows:

"What is contended is that historically federal courts have carved out a rule to protect themselves from interference by state courts, and that a plaintiff in a federal court proceeding has an absolute right to prosecute his suit and collect his judgment in that court—a right which would somehow be arrested or taken away by giving effect to the New York attachment."

That sounds exactly like respondent's basic contention in our case.

After this review of the authorities we do not think it necessary to argue that the distinction drawn in *Kline v. Burke Construction Co.* between proceedings *in personam* in state and federal courts, where there is no direct conflict and where the prohibition of Section 265 applies, and conflicting proceedings *in rem* or *quasi in rem*, where there is direct conflict and a federal court can enjoin the parties from proceeding in the state court, in spite of Section 265, is thoroughly grounded in the decisions, early and late.

We think it quite significant that when Congress, in the Interpleader Act, authorized a particular federal court injunction against proceedings in state courts which, of course, is not within the prohibition of Section 265, *Treimies v. Sunshine Min. Co.*, 308 U. S. 66, it carefully limited that injunction to enjoining suits "on account of the property" involved in the federal interpleader suit, that is, to protecting the *res* in the possession of the federal court. Thereby

we think Congress recognized the distinction we have been discussing, and put its approval on it.

In our case there was no conflict *in rem* or *quasi in rem*. To sustain the theory of the court below this Court will have to wipe out the well settled distinction.

We think it follows clearly from the authorities that the Tennessee injunction was not void and that the injunction issued by the federal district court below was erroneous and in violation of Section 265, as well as an incompetent collateral attack on the Tennessee judgment.

VII.

The Dilemma Which Respondent Sees in Our Position is Illusory and the Decisions of This Court Dispel the Illusion.

Respondent's counsel contend that our position puts us in a dilemma. We contend, they say, that the Tennessee injunction was not a direct interference with the federal district court in Missouri but was only a personal restraint on respondent, and hence was not in violation of the rule of comity between courts, but that we contend that the injunction issued by the federal district court in Missouri violated Section 265, although it did not run directly against the state court or its process or any *res* in its possession, but operated only against the party, petitioner.

That is our position. Our answer to respondent is that in taking that position we are not impaled on the horns of a dilemma but are following a distinction which this Court has clearly drawn in its opinions.

As we said on page 44 of our main brief, where the remedy of injunction is expressly denied by statute, as by Section 265, forbidding federal court injunctions to stay proceedings in state courts, it has been uniformly held that the fact that the injunction does not run directly against the state court or its process or any *res* in its possession, but only operates to restrain parties from proceeding further in the state courts, does not take the federal injunction

out of the prohibition of Section 265. That section clearly forbids federal courts from restraining parties from further proceeding in the state courts. See the thirteen cases cited on page 44 of our main brief, beginning with *Diggs v. Wolcott*, 4 Cranch 179, and ending with *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U. S. 270, 274, in all of which federal injunctions merely to restrain parties from further proceeding in the state courts were held to be violative of Section 265.

But where there is no statutory prohibition of the writ of injunction, as where one federal district court enjoins parties from further proceeding in another federal district court, or where a state court merely enjoins a party from further proceeding in a federal court, in which cases the only prohibition against injunction is such as is implicit in a rule of comity between courts, then the distinction is well settled that the injunction merely against the party is not an interference with the other court. In such case the restraint of the party is not legally tantamount to the restraint of the court itself.

This was made abundantly clear in *Steelman v. All Continent Co.*, 301 U. S. 278, a case in the latter category, involving injunction by a federal district court to restrain parties from proceeding in another federal district court. In the unanimous opinion of this Court in that case the very argument made here by respondent was made. The Court said (290-291):

“ * * * The argument misconceives the grounds upon which the trustee looks to us for aid. The trustee does not challenge the jurisdiction of the federal court in Pennsylvania, if the word jurisdiction be taken in its strict and proper sense. Cf. *Straton v. New*, 283 U. S. 318, 321; *Isaacs v. Hobbs Tie & Timber Co.*, 282 U. S. 734, 737, 738. He is not seeking a writ of prohibition directed to the court itself. He is not seeking an injunction to vindicate his exclusive control over a *res* in his possession, or in the possession, actual or constructive, of the court that appointed him. *Isaacs v. Hobbs Tie & Timber Co.*, *supra*; *Murphy v. John Hofman Co.*, 211

U. S. 562, 568, 569; *Moran v. Sturges*, 154 U. S. 256, 274. What he seeks is an injunction directed to a suitor, and not to any court, upon the ground that the suitor is misusing a jurisdiction which by hypothesis exists, and converting it by such misuse into an instrument of wrong. *Gage v. Riverside Trust Co.*, 86 Fed. 984, 998, 999; *Higgins v. California Prune & Apricot Growers*, 282 Fed. 550, 557; *Cole v. Cunningham*, 133 U. S. 107, 112, 117, 118. Suits as well as transfers may be the protective coverings of fraud. *Shapiro v. Wilgus*, 287 U. S. 348, 355. We are unable to yield assent to the statement of the court below that 'the restraint of a proper party is legally tantamount to the restraint of the court itself.' The reality of the distinction has illustration in a host of cases. 2 Story, Eq. Jur., 14th ed., § 1195; 5 Pomeroy, Eq. Jur., § 2091; *Cole v. Cunningham*, *supra*; *Madisonville Traction Co. v. Mining Co.*, 196 U. S. 239, 245; *Kessler v. Eldred*, 206 U. S. 285; *Rickey Land & Cattle Co. v. Miller & Lux*, 218 U. S. 258; *Toledo Scale Co. v. Computing Scale Co.*, 261 U. S. 399, 426; *Smith v. Apple*, 264 U. S. 274, 279. Cf. Judicial Code, § 265; 28 U. S. C. § 379; *Brown v. Pacific Mutual Life Ins. Co.*, 62 F. (2d) 711, 713; *Chicago Title & Trust Co. v. Fox Theatres Corp.*, 69 F. (2d) 60, 61, 62."

The very fact that the court there drew the very distinction we have above drawn, and after citing with approval *Cole v. Cunningham*, 133 U. S. 107, and other cases down to *Smith v. Apple*, 264 U. S. 274, 279, then said "Cf. (compare) Judicial Code Section 265," shows that the Court was expressly distinguishing the cases under Section 265 from the *Steelman Case* and other cases of its class there cited.

In our case, as in the *Steelman Case*, we do not challenge the jurisdiction of the federal district court in Missouri "if the word jurisdiction is taken in its strict and proper sense"; we were not seeking in the Tennessee court "a writ of prohibition directed to the (district) court itself." What we were seeking, and secured, was "an injunction directed to a suitor, and not to any court, upon the ground that the

suitor is misusing a jurisdiction which by hypothesis exists, and converting it by such misuse into an instrument of wrong." And, since in such case there is no statutory prohibition against injunction, the restraint of the party is not "legally tantamount to the restraint of the court itself."

VIII.

Even if the Court Should Hold Against Us and With Respondent on the Basic Questions Thus Far Argued, the Decision Below Must Be Reversed Because Respondent Has Misconceived Her Remedy. Her Proper Remedy Was a Direct Review of the Tennessee Judgment. The Collateral Attack on it in the District Court Below Was Incompetent.

Even if respondent is right in her basic position, that the mere fact that the federal district court in Missouri had jurisdiction first acquired, by the force of the rule of comity,* deprived the Tennessee equity court of *power* to enjoin respondent from further prosecuting her action in the federal district court in Missouri, still the denial of *power* is not a destruction of *jurisdiction*. If respondent is right so far, the Tennessee injunction was only erroneous for excess of power, not absolutely void for want of jurisdiction. If the substantive law is as respondent contends, then the Tennessee court, *in the exercise of existing jurisdiction*, should have refused the injunction prayed by petitioner on the ground that the prior existing jurisdiction of the federal court, under the Liability Act, **deprived the Tennessee court of power to issue the injunction prayed.**

This distinction is thoroughly settled by this Court's decisions under Section 265 itself.

* Respondent quotes language from this Court to the effect that it is a rule of "necessity." If so, it is a rule of comity arising out of necessity. Nomenclature is unimportant. What is important is just what the rule is and just what are its limitations.

In *Smith v. Apple*, 264 U. S. 274, it was held that Section 265 is not a jurisdictional statute, that it neither confers nor denies jurisdiction, but is a mere limitation on the grant of the right to issue a particular equitable remedy.

Suit was there brought in a federal district court to enjoin the defendant from enforcing certain judgments he had obtained in a state court. The district judge dismissed the bill on the ground that the injunction sought was forbidden by Section 265. Plaintiff appealed direct to this Court. If the decision of the district court was on an issue of its *jurisdiction* direct appeal lay here, otherwise appeal lay only to the Circuit Court of Appeals.

This Court held that the dismissal on the ground that the court was prohibited by Section 265 from granting the relief sought by the bill did not involve an issue as to the jurisdiction of the court but was an exercise of existing jurisdiction and the equivalent of holding that the bill was without equity.

The same holding was made in *Woodmen of the World v. O'Neill*, 266 U. S. 292, 298.

It follows that even if the first acquired jurisdiction of the federal district court below deprived the Tennessee court of the power to issue the injunction which it issued, it did not deprive that court of jurisdiction. Its judgment was not absolutely void for want of jurisdiction. It could not be disobeyed or disregarded. It could not be attacked collaterally in the federal court. The only proper course was to seek a direct review of the Tennessee judgment. *Lion Bonding Co. v. Karatz*, 262 U. S. 77, 89-90.

That was the course pursued in *Baltimore & Ohio v. Kepner*, No. 20 this term, and in several other cases presented at this term.

IX.

It is the Fault of Respondent's Counsel if She is now Barred in All Jurisdictions Save the District Court in Missouri Below.

Counsel for respondent use strong language to characterize a statement in our main brief. We had stated that the federal and state courts in Tennessee and in North Carolina remained open to respondent under the Tennessee court injunction to bring her liability action therein. Counsel for respondent characterize our statement (their brief, 70) as "simply, utterly false and without any foundation whatsoever."

Of course we were speaking of the times dealt with by the record and our statement was correct.

All that counsel for respondent mean by their strong language is that since the decision by the Circuit Court of Appeals below, since it granted stay of its mandate to allow petitioner to file petition for *certiorari* here, and, indeed, on the very day before our petition was filed here, the two year statutory limitation on the right to maintain the death action fell. As a result respondent is now barred from bringing a new suit in any jurisdiction other than the federal district court in Missouri in which sued. But that is not by reason of the restraint of the Tennessee injunction. She was left by that injunction entirely free to resort to state or federal courts in North Carolina or Tennessee.

The chronology is significant. The death occurred February 3, 1939 (R. 2, 3). Respondent filed her action in the district court in Missouri on August 31, 1939 (R. 2). The Tennessee injunction issued on May 27, 1940 (R. 35). Respondent filed her supplemental bill in the district court in Missouri on June 21, 1940 (R. 14). On July 10, 1940, the district court in Missouri issued its counter injunction (R. 53). Notice of appeal and supersedeas order were filed on July 10, 1940 (R. 54-55). The record was filed in the Court of Appeals for the 8th Circuit on July 29, 1940 (R. 67). The Court of Appeals affirmed the judgment of the District

Court on January 10, 1941 (R. 78). Within ten days thereafter we filed petition for stay of mandate to allow us time to file petition for *certiorari* here and the court below stayed the mandate on January 21, 1941 (R. 98).

During all that time the state and federal courts of North Carolina and Tennessee were open to respondent to sue petitioner under the Liability Act. It was not until February 3, 1941, that the two year period of bar under the Act expired.

The only reason why respondent is now barred by statutory time limit from suing in any other state or federal court than the federal district court in Missouri is that her counsel were so cocksure of their legal judgment on the important issues at bar in this Court as to gamble their client's rights under the Liability Act on their confident professional judgment. If they were right, well and good. If they were wrong, then the fault is not petitioner's.

In the *Kepner Case*, No. 20 this term, counsel for the injured employee Kepner were not so cocksure and took no such gamble with their client's rights. Even though the Ohio court in that case denied injunction to restrain Kepner from proceeding with his action in the federal district court in New York, conceiving that the Liability Act deprived it of power to do so, yet, pending direct appellate proceedings and *certiorari* proceedings here, counsel for Kepner protected their client's rights by bringing another action under the Liability Act in Ohio, the state of residence, so that he would not be barred if decision in this Court should go against him.

Counsel for respondent in our case would have been well advised if they had done the same thing.

The same comment is pertinent to the repeated complaining references by respondent's counsel to the fact that the Tennessee injunction was an *ex parte* injunction. An *ex parte* injunction of a state court, they say, undertook to stop respondent from exercising her federal rights in the district court in Missouri.

Of course, it was *ex parte*. It was an ordinary *ex parte* preliminary injunction, in the nature of a preliminary restraining order. But it was personally served on respondent. In ordinary course of equity practice she would be expected to appear and resist its continuance, set up her alleged federal right, move to set aside the injunction for want of power, or to modify or restrict its terms for error of law. If she had, then either there would have been no Tennessee injunction, or, if there had been one, it would not have been *ex parte*.

The only reason it is *ex parte* is that respondent refused to appear, chose to disregard the Tennessee equity suit, and rested her rights on a collateral attack on the Tennessee judgment in the federal district court in Missouri. We could not force her to appear in the Tennessee suit. It is respondent's fault if the Tennessee injunction remained *ex parte*.

CONCLUSION.

Upon all the foregoing, we submit that the decision below should be reversed.

Respectfully submitted,

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FILED

OCT 9 1941

CHARLES ELMORE COOLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 24.

SOUTHERN RAILWAY COMPANY,

Petitioner,

v.

ETHEL PAINTER, Administratrix of the Estate of
GEOFFREY L. PAINTER, Deceased,

Respondent.

On Writ of Certiorari to the United States Circuit
Court of Appeals for the Eighth Circuit.

BRIEF OF RESPONDENT.

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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 24.

SOUTHERN RAILWAY COMPANY,
Petitioner,

v.

ETHEL PAINTER, Administratrix of the Estate of
GEOFFREY L. PAINTER, Deceased,
Respondent.

On Writ of Certiorari to the United States Circuit
Court of Appeals for the Eighth Circuit.

BRIEF OF RESPONDENT.

STATEMENT.

Petitioner's statement is correct that this case is here upon writ of certiorari (R. 99) to review the opinion and judgment of the United States Circuit Court of Appeals for the Eighth Circuit, affirming an injunctional order issued by the District Court of the United States for the

Eastern District of Missouri (R. 42-49, 73-76) upon a supplemental complaint filed by respondent in an action there pending by her against the petitioner railway here under the Federal Employers' Liability Act (R. 2, 7, 14-26), by which injunction petitioner railway was restrained and enjoined from enforcing against respondent an injunction issued at petitioner's instance by the Chancery Court of Knox County, Tennessee, and mandatorily commanding petitioner to dismiss and set at naught its action in the Tennessee state court, the sole purpose of the proceeding in, and the injunction issued by, the Tennessee state court being to restrain and enjoin respondent from further maintaining and prosecuting her said action in the said District Court of the United States, and to divert the litigation of that action to one of the courts designated in the Tennessee state court injunction.

The statement of the facts made in petitioner's brief, while not inaccurate in so far as it goes, has been so shortened as to omit many facts which we believe must be given consideration in order to arrive at a correct decision of this case. That, together with our conviction that a more or less chronological statement will be of material assistance to this Honorable Court, compels us to make our own statement of the facts involved.

The petitioner, Southern Railway Company, was and is a corporation organized and existing under the laws of the State of Virginia, a citizen and resident of that state, with its principal office in the City of Richmond, Virginia, a common carrier by railroad engaged in interstate commerce in various of the several states of the United States, doing business as such common carrier in the City of St. Louis, State of Missouri, in the Eastern Judicial District of Missouri, and operating its railroad trains in, into and out of said City of St. Louis (R. 16, 26, 42).

On February 3, 1939, one Geoffrey L. Painter, a citizen and resident of the City of Knoxville, County of Knox, State of Tennessee, while in the course of his employment by petitioner railway as a locomotive fireman on one of its interstate trains running between Bull's Gap, Tennessee, and Asheville, North Carolina, and while engaged with petitioner in interstate commerce and transportation, sustained fatal injuries as a direct result of the derailment of said train at or near the Town of Paint Rock, County of Madison, State of North Carolina, and left surviving him his wife, Ethel Painter (the respondent here), and several minor dependent children (R. 2, 3, 6, 7, 8, 9, 10, 11, 14-15, 27, 32-43).

Thereafter said Ethel Painter, also a citizen and resident of the City of Knoxville, County of Knox, State of Tennessee (R. 16, 27, 43), was duly appointed administratrix of the estate of said Geoffrey L. Painter, deceased, by the Probate Court of Knox County, Tennessee (R. 2, 7, 15, 27, 43), and, on August 31, 1939, filed an action against petitioner railway, under the Federal Employers' Liability Act (45 U. S. C. A., § 51-59), in the District Court of the United States for the Eastern Judicial District of Missouri, to recover damages for the injuries to and death of her decedent, for the benefit of his said surviving widow and minor children (R. 2-5, 59). Upon being duly summoned, petitioner railway duly filed its answer in said action, pleading solely to the merits of plaintiff's cause of action alleged in her complaint (R. 6-7, 59).

Thereafter, and following various incidental proceedings in said action in the said district court (R. 59-60), plaintiff filed an amended complaint in said action on March 8, 1940 (R. 7-9, 60), to which the railway filed a motion to make more definite and certain (R. 9-10, 60), and, following the taking up, submission and overruling of that motion (R. 11-12, 61), the railway filed its answer to said

amended complaint, pleading solely to the merits of the cause of action, by way of denial of a part of the allegations of said amended complaint, and by way of pleading affirmative defenses of contributory negligence and assumption of risk (R. 10-11, 61).

The issues having been joined without any attack on, or challenge of, the jurisdiction of the district court below by the railway (R. 16, 43), the case was set for trial on July 8, 1940 (R. 15, 43, 61).

After the case had been so set for trial, and on May 27, 1940, the railway company filed in the Chancery Court of Knox County, State of Tennessee, a bill of complaint, wherein it was named as complainant and said Ethel Painter, as administratrix aforesaid and individually in her own right, was named as defendant, and the railway secured thereon an ex parte interlocutory order of injunction whereby the said Ethel Painter, both in her said representative capacity and individually, was restrained and enjoined from in any way further maintaining or prosecuting her said action under the Federal Employers' Liability Act pending in the district court below at St. Louis, Missouri, and from instituting or prosecuting a similar action against the railway in any jurisdiction other than in the state courts for Knox County, Tennessee, or the state courts for Madison County, North Carolina, or in the United States District Court for the Eastern District of Tennessee at Knoxville, or for the Western District of North Carolina at Asheville (R. 17-19, 26-35, 43-44). This bill of complaint in the Tennessee Chancery Court, and the summons and writ of injunction issued thereon, were duly served upon respondent, Ethel Painter, on the said 27th day of May, 1940 (R. 18).

The said bill of complaint of the railway, upon which the writ of injunction was issued by the Chancery Court of

Knox County, Tennessee (and which is set out in full at R. 26-33), was founded in the charges, substantially, that the trial of respondent's said action under the Federal Employers' Liability Act in the United States District Court for the Eastern Judicial District of Missouri, the trial court below, would (a) impose upon the railway greater expense, inconvenience and burden than would the trial of such action in the City of Knoxville, County of Knox, State of Tennessee, the residence of the respondent, or in the Western District of North Carolina, which included the County of Madison of that state, in which the cause of action for the injuries to and death of respondent's intestate arose; (b) burden the railway in its work of moving interstate commerce; (c) permit respondent to avoid the laws of the States of Tennessee and North Carolina; (d) permit respondent to secure advantages of the laws of the State of Missouri; and (e) thereby permit respondent to obtain improper and oppressive advantages so as to compel said railway company to submit to unjust and unreasonable demands made by her, and deprive it of its property without due process of law (R. 19-21, 44).

Thereafter, on June 7, 1940, after having given due written notice of her intention so to do (R. 12-14, 61), respondent, Ethel Painter, moved the district court below for leave to file a verified supplemental complaint in her said action under the Federal Employers' Liability Act, which said motion was heard and submitted (R. 61), and on June 19, 1940, the said district court granted plaintiff leave to file said supplemental complaint and issued a temporary restraining order thereon, until a hearing on plaintiff's motion for a preliminary injunction (R. 38-41), and such supplemental complaint and said temporary restraining order were duly received and filed in said district court on June 21, 1940 (R. 14, 38).

This verified supplemental complaint of respondent (set

out in full at R. 14-26) sought relief to preserve the jurisdiction of the said district court below of and over respondent's said action under the Federal Employers' Liability Act pending therein, and, after alleging the facts hereinbefore recited, further alleged:

(a) that respondent had and has an absolute right to maintain her said action under the Federal Employers' Liability Act in said District Court of the United States;

(b) that such action will not impose upon the railway any greater expense or burden than is imposed by law, and particularly the Federal Employers' Liability Act;

(c) that the district court below has, and since respondent's said action was filed therein had had, specific, full, complete, sole and exclusive jurisdiction of and over respondent's said action under the Federal Employers' Liability Act, and the parties thereto;

(d) that respondent in both her representative capacity and as an individual, is a necessary and material witness at the trial of her said action under the Federal Employers' Liability Act, and was and is prevented by the injunction suit and proceedings in Tennessee from testifying either at the trial or by deposition, in her said action pending in the district court below and over which said district court had jurisdiction;

(e) that said injunction suit and proceedings in Tennessee [1] amount to an unwarranted interference and intermeddling with the jurisdiction of the district court below; [2] arrest, impair, frustrate, defeat and destroy the jurisdiction of the district court below, and the due and proper administration of justice; [3] unlawfully, without due process of law, and inequitably deprives respondent of rights granted her by the laws of the United States enacted pursuant to the Constitution; [4] set aside and at naught the laws of the United States, and the Federal Employers' Liability Act; and [5] were null, void and of no force or effect;

(f) that respondent is desirous of trying her said action, under the Federal Employers' Liability Act, in the district court below, which she had the absolute right to do, and

(g) that the district court below could not properly exercise its jurisdiction in respondent's said action under the Federal Employers' Liability Act; that respondent would suffer irreparable damage and unconscionable and inequitable wrong, and that respondent would be subjected to the risk of punitive action by said Chancery Court of Tennessee if she should attempt to try her said action in the district court below, unless the relief prayed for in her supplemental complaint be granted and said proceedings in said Chancery Court of Tennessee be dismissed.

By the prayer of such supplemental complaint (R. 24-25) respondent asked for relief, in substance, enjoining petitioner Southern Railway Company from doing any matter or thing tending to interfere with the jurisdiction of the district court below over, or with the prosecution of, respondent's said action under the Federal Employers' Liability Act pending in said district court, and enjoining and directing the railway to dismiss its said bill of complaint and injunction proceeding in the said Chancery Court of Knox County, Tennessee. Copies of the railway's said bill of complaint in said Chancery Court of Tennessee, the fiat issued thereon, the summons thereon, and the writ of injunction issued thereon, were attached to respondent's supplemental complaint in the district court below, as Exhibit A to said supplemental complaint (R. 26-35).

Following a hearing duly had upon respondent's motion for a preliminary injunction on her verified supplemental complaint, and upon the railway's motion to dismiss said supplemental complaint (R. 36-37, 41, 61, 63),

the federal district court below found the facts substantially as alleged in said supplemental complaint (R. 42-45), and made conclusions of law which were in substance that:

1. The petitioner Southern Railway Company was subject to suit, and personal service of process, in the Eastern Division of the Eastern Judicial District of Missouri, in actions brought under the Federal Employers' Liability Act (R. 45).

2. The respondent had and has a federal right to institute and prosecute in said district court below her said action against the railway under that act (R. 45-46).

3. Said district court below has had, and now has, specific, complete, sole and exclusive jurisdiction of and over the subject matter of, and the parties, to respondent's said action against petitioner railway under that act (R. 46).

4. The jurisdiction of said district court having attached to said action, the right of respondent to prosecute said action in that court to a final conclusion, and the right of that court to proceed to a hearing and determination of said action, without interference or impairment by proceedings in another court, could not be entrenched upon (R. 46).

5. The district court below had the duty, right power and authority to maintain and exercise its jurisdiction of and over respondent's said action under the act, until the final object of the action is accomplished and complete justice done between the parties thereto, and, if necessary to that end, to issue its writ of injunction to: (a) preserve and protect the jurisdiction of said district court over said action; (b) prevent the parties to said action from doing any matter or thing tending to interfere with, arrest, impair, frustrate or defeat the jurisdiction of said district court below; (c) prevent and defeat any attempt by either of the parties to divert said action from the district court below to any other court or courts; and (d) prevent peti-

tioner Southern Railway Company from carrying on a suit in a state court when and in so far as such suit interfered with the effective trial and determination of the issues involved in respondent's action under the Federal Employers' Liability Act pending in said district court below (R. 46-47).

6. The injunction suit and proceedings in the Tennessee Chancery Court interfered with, arrested, impaired and tended to frustrate and defeat the jurisdiction of the district court below over respondent's said action pending therein under the Federal Employers' Liability Act; interfered with, arrested, impaired and tended to frustrate and defeat the due and proper administration of justice; attempted to divert the litigation of the action over which said district court had acquired and had full jurisdiction to another court; deprived the respondent of her absolute federal right, granted her by the laws of the United States, to institute and prosecute her said action to a final conclusion in said district court; and worked an inequitable and unconscionable wrong upon the respondent (R. 47).

7. The Chancery Court of Knox County, Tennessee, was without authority or jurisdiction to entertain or consider the injunction suit and proceedings instituted therein by petitioner Southern Railway Company; and the legislature nor the courts of any state have any right, power, authority or jurisdiction to interfere with or restrict the operation of a law or laws of the United States, or any rights granted thereunder (R. 48).

8. The injunction issued by the Chancery Court of Tennessee was null, void and of no force and effect (R. 48).

9. Respondent had no adequate remedy at law for relief from the injunction suit or proceedings in the Chancery Court of Tennessee, or from the injunction issued thereon, and, unless such injunction suit or proceeding, and the injunction issued thereon, be dismissed, the district court

below could not properly perform its duty or properly exercise its jurisdiction, prescribed by the laws of the United States, and respondent would be inequitably and unconscionably wronged and suffer irreparable damage (R. 48).

10. The respondent's supplemental complaint, filed in and ancillary to her said action under the Federal Employers' Liability Act, was a proper and adequate method of securing injunctive relief from the conduct of the petitioner railway in instituting and prosecuting said injunction suit proceeding in the Chancery Court of Tennessee, and a proper and adequate method of initiating the necessary action by the district court below to preserve and protect its jurisdiction from interference, arrest, impairment, frustration or defeat (R. 48-49).

11. Section 265 of the Judicial Code has no application to the relief sought by respondent's supplemental complaint filed in the district court below, and said supplemental complaint and the relief sought thereby came within the plenary and inherent powers of the district court below, and Section 262 of the Judicial Code (R. 49).

12. The respondent's motion for a preliminary injunction be sustained, and a preliminary injunction granted respondent against petitioner railway, as prayed in respondent's supplemental complaint (R. 49).

A preliminary injunction was thereupon issued by the district court below (R. 73-76) restraining petitioner railway from interfering with the respondent in carrying on her said action in the district court below, restraining petitioner railway from doing any matter or thing tending to interfere with the jurisdiction of the district court below of and over respondent's said action pending therein against the railway under the Federal Employers' Liability Act, restraining petitioner railway from taking any except dismissal proceedings in the injunction suit and proceeding pending in the Chancery Court of Knox County,

Tennessee, and directing petitioner railway forthwith to dismiss and set at naught said injunction proceeding in the Chancery Court of Tennessee. The writ of injunction was duly served upon petitioner railway (R. 54).

From the order of the district court below, and the writ of preliminary injunction issued pursuant thereto, petitioner railway duly took its appeal to the Circuit Court of Appeals for the Eighth Circuit, which affirmed the order and judgment of the district court below (R. 94-95), and rendered an opinion (R. 78-94; reported in 117 F. 2d 100-108), giving as a basis for its decision and judgment substantially the same conclusions of law as were arrived at by the federal district court below.

Any other of the incidental facts necessary to the consideration of the propositions involved here will be adverted in our argument herein.

STATUTES INVOLVED.

The statutes involved in this case are:

First: The Federal Employers' Liability Act of 1908 (April 22, 1908, c. 149, 35 Stat. 65 et seq.), as amended by the supplemental Act of 1910 (April 5, 1910, c. 143, 36 Stat. 291), and particularly sections 1, 6 and 9 thereof (45 U. S. C. A., §§51, 56 and 59).*

Second: Section 262 of the Judicial Code, 28 U. S. C. A., §377.

Third: Section 265 of the Judicial Code, 28 U. S. C. A., §379.

The material portions of these statutes are hereinafter set out in an appendix to this brief.

*In petitioner's brief it is said that the Federal Employer's Liability Act, as amended by the Act of August 11, 1939, c. 685, 53 Stat. 1404, et seq., is applicable, but, since the cause of action here involved arose on February 3, 1939, the petitioner's contention is obviously incorrect.

SUMMARY OF THE ARGUMENT.

I.

The district court below had specific, full and complete jurisdiction over both the subject matter of, and the parties to, respondent's action therein against petitioner railway company under the Federal Employers' Liability Act, to recover damages for the injury to and death of respondent's decedent, Geoffrey Painter.

II.

The Chancery Court of Knox County, Tennessee, was wholly without authority or jurisdiction over the subject matter of the proceeding instituted therein by the petitioner railway company, and the injunction issued in that proceeding was unauthorized and void, because:

(a) The district court below having by law jurisdiction over the respondent's action against petitioner railway for damages, and that jurisdiction having attached, the right of petitioner to prosecute her action to a final conclusion in that court, and the right and duty of that court to proceed to exercise its jurisdiction to that end, without interference by proceedings in another court, were exclusive and could not be entrenched upon.

(b) The right of the respondent to resort to the prescribed federal courts for the litigation of her action against the petitioner railway, and the jurisdiction of those courts over plaintiff's action, could not be affected, diminished or enlarged upon by state action.

(c) A state court simply has no power or authority to enjoin the process of, or proceedings in, a federal court, and cannot enjoin parties to an action in a federal court from further prosecuting that action.

(d) The foregoing principles are particularly applicable

where the action in the federal court is one under a federal Act. The Federal Employers' Liability Act is the supreme, paramount and exclusive law of the land respecting all rights and liabilities, and the jurisdiction and venue of actions, concerning an employer's liability for injury to and death of employees in interstate transportation by rail.

(e) The exercise of the respondent's right to bring and maintain her action for damages against petitioner railway in the district court below, and the exercise of that court's right and duty to take and exercise its jurisdiction over respondent's action, having been specifically provided for by section 6 of the Federal Employers' Liability Act, were not conditioned upon any questions of convenience, expense, or burdensomeness, because the Congress, having the right to regulate and control the subject matter of the act, could place the burdens incidental to such regulation and control as it saw fit.

(f) The Federal Employers' Liability Act, which created the respondent's right to bring and maintain the action for damages in the district court below, and which created the right and duty of the district court below to take and exercise jurisdiction over said action, being the supreme and exclusive law governing those rights and duties, was as much the law of Tennessee, and those rights and duties were as much prescribed by the law of Tennessee, as if expressly provided by specific statutes of that state. The exercise of those rights and duties was not, and could not be, in conflict with the law or public policy of the State of Tennessee.

(g) This respondent brought her action in the federal district court below not by virtue of her appointment as administratrix under the law of Tennessee, but by virtue of her designation by the federal statute as trustee for the beneficiaries named in the federal act.

III.

The injunction issued by the Tennessee Chancery Court, being void by reason of having been issued by a court which had no jurisdiction of the subject matter, is not entitled to be given "full faith and credit" under the constitutional provisions, and is not binding upon either this court or the courts below.

IV.

The district court below had both reason and occasion, and power and authority, to issue the injunction which it issued against petitioner railway company, because:

(a) The injunction proceeding brought by petitioner railway company in, and the injunction issued by, the Chancery Court of Knox County, Tennessee, although directed against plaintiff alone, interfered with, impaired, and tended to frustrate and defeat, both the respondent's right to prosecute her action to a final conclusion in the district court below, and the jurisdiction of that court.

(b) The federal courts have the inherent power and authority to protect and preserve their jurisdiction over an action pending before them, by enjoining any proceeding which tends to interfere with, impair, frustrate or defeat that jurisdiction.

(c) In view of the provisions of section 262 of the Judicial Code (28 USCA, § 377), section 265 of the Judicial Code (28 USCA, § 379) has no application to such an injunction, even though such injunction may have the effect of staying proceedings in a state court.

V.

No state or federal court, other than the federal district court below in Missouri, is open or available to respondent for the prosecution of her cause of action against petitioner railway for the injury to and death of her decedent.

ARGUMENT.

At the outset of the argument in its brief here, petitioner railway has undertaken to set out a large number of asserted conflicts of law and fact which it deems must be "reconciled" before there can be had a correct decision of this case. We believe it would serve no useful purpose, and that there is no necessity for this Court, to labor with those alleged conflicts to point out their fallacies. This case involves no more than a conflict of jurisdiction between a state court and a federal court due to the inherent dual sovereignty existent in the form of the government of the United States, and can be determined by the consideration and application of a few well-settled principles, and the well-settled exceptions to those principles.

I.

The federal district court below, in Missouri, had specific, full and complete jurisdiction over both the subject matter of, and the parties to, this respondent's action against petitioner railway company under the Federal Employers' Liability Act (Act of Apr. 22, 1908, c. 149, 35 Stat. 65 et seq., as amended by Act of Apr. 5, 1910, c. 143, 36 Stat. 291 et seq.; 45 USCA, §§ 51-59) to recover damages for the injury to and death of respondent's decedent.

There is, and can be, no room for any dispute about the matter just above stated in bold-face type.

The cause of action created by the Federal Employers' Liability Act is a transitory one *in personam*, and the jurisdiction of courts over, and the venue of, actions under the act were specifically provided for by the amendment of 1910 to section 6 of the Act (Act of Apr. 5, 1910, c. 143, § 1, 36 Stat. 219, 45 USCA, § 56), which originated as H. R. 17263 of the 61st Congress, 2d Session, and which,

in so far as is material to the matter now under discussion, provides:

“Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or *in which the defendant shall be doing business at the time of commencing such action.* The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States, and no case arising under this chapter and brought in any state court of competent jurisdiction shall be removed to any court of the United States.” (Emphasis supplied.)

Under the plain language of this provision of the Act the plaintiff in an action under the Act is given an unqualified right to select both the jurisdiction and the venue in which to bring his action, and it has been aptly said that this provision is “one for the benefit of the plaintiff” which permits him to institute his action in whichever of the * * * designated places best suits his convenience” (Roberts’ Federal Liability of Carriers, 2d Ed., Vol. 2, p. 1842, § 959). The legislative history of this provision fully confirms its plain language. In the course of the debate in the House of Representatives upon this amendment to the Act, Mr. Sterling, who had charge of the bill in the House, said (Congressional Record, Vol. 45, Part 3, p. 2253):

“Mr. Speaker, this proposed amendment makes three changes in the employers’ liability law. As the law is now suit can be brought only in the district where the defendant is an inhabitant. It has been so held by one of the federal courts in Texas. *This amendment proposes to allow the plaintiff to begin suit in the district where the plaintiff lives, or in the district where the defendant lives, or in the district where the injury occurred, or in the district where the defendant may be found at the time action is commenced.*” (Emphasis supplied.)

and, further (ibid, p. 2255):

“It makes it much more convenient for the plaintiff to bring his suit by providing that he may bring suit in his own district or the defendant’s district or where the injury occurred or *where the defendant may be found*. As the law is now, a suit can only be brought in the district where the defendant is domiciled.” (Emphasis supplied.)

and, still further (ibid, p. 2257):

“I think that the amendment in this bill simply provides the same rule in reference to the place of bringing suit that is provided in practically all of the States of the Union. Now, they can always, in the state courts, bring suit, as a rule, wherever the defendant can be found, and *this simply gives the plaintiff the right to bring suit in a federal court where the defendant can be found*. * * * The plaintiff can bring suit in the state or federal court, as he sees fit.” (Emphasis supplied.)

During the debates in the Senate upon this amendment, Mr. Borah, who had charge of the bill in that house of the Congress, said (Congressional Record, Vol. 45, Part 4, p. 4034):

“So, if this bill should be passed the law will be remedied in that respect, in *enabling the plaintiff to bring his action* where the cause of action arose, or *where the defendant may be doing business*. The bill enables the plaintiff to find the corporation at any point or place or State where it is actually carrying on business, and there lodge his action, if he chooses to do so.”

The report of the Senate Judiciary Committee upon this amendment (Report No. 432, appearing in full in the Congressional Record, Vol. 45, Part 4, pp. 4040-4041) says, in part (ibid, p. 4041):

“This amendment is necessary in order * * * to make it unnecessary for an injured plaintiff to pro-

ceed only in the jurisdiction in which the defendant corporation is an 'inhabitant.' This is held by the courts to be the jurisdiction in which the charter of the corporation was issued. * * *. It seems clear from these decisions that a suit in a Federal court under this law, where jurisdiction is founded on the fact that the case involves a Federal statute, must be brought in the district of which the defendant is an inhabitant.

"No argument is necessary to convince that this is a grave injustice to the plaintiff.

"Such an embarrassing situation ought not to be permitted to exist where any plaintiff is proceeding in a Federal court on a right based on a law of the United States."

That the Congress had in mind that the amendment might cast upon a railroad some considerable inconvenience, expense and burden in defending an action at some distance from its residence or from the place where the cause of action arose, is shown by the comment of Mr. Burke, of Pennsylvania, who, during the course of the debate in the House upon the amendment, said (Congressional Record, Vol. 45, Part 3, p. 2257):

"That throws light upon the very business that the gentleman is familiar with, of bringing actions, and would impose as much hardship by bringing actions in remote places under such a change in the law, and thus compel the defendant to take his witnesses a very great distance at a very great disadvantage."

In direct and simple language the Congress by this provision of the Act gave the plaintiff in an action under the Federal Employers' Liability Act the right to institute and maintain an action in the federal court of any district in which the defendant was doing business at the time the action was commenced. The courts, including this Honorable Court, have "nothing to do but to ascertain and declare the meaning of the few simple words" of this pro-

vision of the Act, which "explanation cannot clarify" and "ought not to be employed to confuse," and if the clear construction of these words is such as to impose hardship upon railroads, "such hardship is no concern of the courts," who have "no responsibility for the justice or wisdom of legislation," but whose duty it is "to enforce the law as it is written" (*St. Louis, I. M. & S. R. Co. v. Taylor*, 210 U. S. 281, 294-295, 28 S. Ct. 616, 52 L. Ed. 1051). For the courts to create ambiguity and implied qualifications in the clear and unequivocal language of this provision of the Act, so as to make plaintiff's right of selection of the forum in which to bring his action dependent upon matters of inconvenience, expense, or burdensomeness to the defendant, would be to amend that provision of the Act by judicial construction, rather than to interpret it.

In conformity with both the express and explicit language of this provision of the Act, as well as the legislative intent in its enactment, this Court has clearly and unequivocally ruled that the right of selection of the forum given plaintiff by this provision is an absolute federal right (*Second Employers' Liability Cases* [*Mondou v. New York, N. H. & H. R. Co.*], 223 U. S. 1, 58, 32 S. Ct. 169, 56 L. Ed. 327; *Hoffman v. State of Missouri ex rel. Foraker*, 274 U. S. 21, 47 S. Ct. 485, 71 L. Ed. 905; *McKnett v. St. Louis-S. F. R. Co.*, 292 U. S. 230, 233-234, 54 S. Ct. 690, 78 L. Ed. 1227; see, also, *State of Missouri ex rel. St. Louis, B. & M. R. Co. v. Taylor*, 255 U. S. 200, 208, 45 S. Ct. 47, 69 L. Ed. 247).

Under this provision of the Act, the fact that petitioner railway company in this case was doing business in the City of St. Louis, State of Missouri, in the Eastern Judicial District of Missouri (R. 16, 26, 42), clearly establishes the right of this respondent to bring and maintain her action in the district court below for that district, and clearly

demonstrates that the district court below had specific, full and complete jurisdiction over both the subject matter of, and the parties to, respondent's action in that court against petitioner railway company under the Act. The petitioner railway here tacitly concedes these matters, for it does not here controvert them in the least; at page 50 of its brief in the Circuit Court of Appeals below, the petitioner railway frankly conceded that both the jurisdiction and the venue of respondent's action against it in the federal district court in Missouri were correct and proper; and in the federal district court below in Missouri, petitioner railway company did not question the venue or the jurisdiction (R. 6-7, 10-11, 59, 61, 79, 80), but, on the contrary, actually invoked the jurisdiction of the district court in respondent's action there by filing and presenting a motion to make the amended complaint more definite and certain (R. 9-10, 60-61).

II.

The Chancery Court of Knox County, Tennessee, was wholly without jurisdiction of the subject matter of the complaint filed therein by the petitioner railway here, and the injunction issued by that court upon that complaint was wholly unauthorized and void.

Notwithstanding that the federal district court below in Missouri had specific, full and complete jurisdiction over both the subject matter of, and the parties to, this respondent's action therein against petitioner railway under the Federal Employers' Liability Act, the petitioner railway company thereafter filed in the Chancery Court of Knox County, State of Tennessee, a bill of complaint (R. 17-18, 26-33, 43-44), the sole and only purpose of which was to secure an injunction to restrain this respondent from the further prosecution of her said action in the federal district court below, and to divert the litigation of

that action to another court or courts, and that state Chancery Court issued an ex parte preliminary injunction (R. 18, 33, 34-35, 43-44), as prayed by petitioner railway, restraining and enjoining this respondent from further maintaining or prosecuting her said action in the federal district court below, and from instituting or prosecuting a similar action in any jurisdiction other than those specified in the injunction, which included only the state and federal courts where this respondent resided and where the cause of action arose.*

The grounds alleged in the complaint filed in the Tennessee Chancery Court as a basis for the injunction by that court are, to say the least, inaptly stated and varied (R. 19-21, 26-36, 44; see, also, ante, pp. 4, 5). Many of them are, patently, without foundation in fact or law—e. g., that the maintenance of respondent's action founded in the federal statute in the federal district court below would permit her to avoid the laws of Tennessee and North Carolina, and secure the advantages of the law of Missouri. The Tennessee court did not indicate upon which of these varied grounds it issued its injunction, but the petitioner railway here asserts (Petitioner's brief, p. 5) that the injunction was issued "on general grounds of equity" in that the maintenance and trial of respondent's action in the federal district court below in Missouri, when plaintiff and witnesses resided in western North Carolina or eastern Tennessee, "would be inequitable, harassing and oppressive, and would work an unjust and inequitable hardship upon petitioner railway," and would unduly burden interstate commerce.

*Under the injunction issued by the Tennessee Chancery Court, respondent was restricted to her place of residence at the City of Knoxville in the bringing of an action in the state or federal courts in Tennessee, and could not have even brought an action at Chattanooga, Tennessee, which was but 111 miles from the place of her residence, and in which the petitioner railway was doing business. Mention is made of this fact to show the highly restrictive and confining nature of the state court's injunction.

Although this Court cannot undertake to ascertain the number and probable importance of the probable witnesses or other matters of relative convenience regarding a trial of this respondent's action against petitioner railway (Denver & R. G. W. R. Co. et al. v. Terte, 284 U. S. 284, 287-288, 52 S. Ct. 152, 76 L. Ed. 295), we believe that this Court can, and will, take judicial notice of the fact that the maintenance and trial of this respondent's action in the federal district court below at St. Louis, Missouri, places no substantially increased burden upon petitioner railway. The trial of the case, whether it be had in St. Louis, in Knoxville, Tennessee, or in western North Carolina, would consume exactly the same time and require the same witnesses. The transportation of those witnesses to and from St. Louis requires only such time as would be the equivalent of an overnight journey each way, so they will not be required to lose any more working days than if the case were tried in Tennessee or North Carolina, and the transportation of such witnesses to and from St. Louis can be had upon free passes so as to require no additional expense of the railway. Furthermore, the petitioner railway company's own time-tables show that the distance from Knoxville, Tennessee, to petitioner railway's residence at Richmond, Virginia (R. 16, 26, 42), where suit against petitioner railway could also have been brought under section 6 of the Federal Employers' Liability Act, is 507.8 miles, while the distance from Knoxville ~~to~~ St. Louis is 559.3 miles—a distance of but about fifty miles farther. Manifestly, the real fact of the matter is that, as this Court so aptly said in St. Louis, I. M. & S. R. Co. v. Taylor, 210 U. S. 281, 295, 28 S. Ct. 616, 52 L. Ed. 1061: /

“ * * when applied to the case at bar the argument of hardship is plausible only when the attention is directed to the material interests of the employer to the exclusion of the interests of the employee. * * ”

The petitioner railway, however, boldly asserts that the

Chancery Court of Knox County, Tennessee, had full and complete jurisdiction of the subject matter of the proceeding before it—i. e., injunction to restrain a resident of Tennessee from further maintaining and prosecuting an action theretofore instituted by such resident of Tennessee against a resident of Virginia in a federal district court in Missouri, upon the ground that the maintenance and prosecution of that action placed an undue inconvenience, expense and burden upon the defendant, and thereby was inequitably vexatious and harassing—so that the injunction issued by the Tennessee court was within its power and authority, and valid and binding. This respondent respectfully submits the contrary, and upon well-established principles independent of the Federal Employers' Liability Act but which are further strengthened and confirmed by the applicability of that Act, the Tennessee court was wholly without authority or jurisdiction of the subject matter of the proceeding instituted therein by petitioner railway, and that its injunction was unauthorized, void, and of no force and effect in law.

(A) It has long been settled by this Court that, where the state and federal courts have concurrent jurisdiction over a cause of action, the grant of concurrent jurisdiction implies that the plaintiff shall have the absolute right to elect the forum in which he will bring his action (*Willeox v. Consolidated Gas Co.*, 212 U. S. 19, 40, 29 S. Ct. 192, 53 L. Ed. 382; *State of Missouri ex rel. St. Louis, B. & M. R. Co.*, 266 U. S. 200, 208, 45 S. Ct. 47, 69 L. Ed. 247; 21 *Corpus Juris Secundum*, p. 807, § 527). In *Willeox v. Consolidated Gas Co.*, *supra*, this Court tersely said (212 U. S., l. c. 40):

“The right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied.”

It has, also, been long and well settled that, when a federal court is properly appealed to in a case over which it

has by law jurisdiction, it is not only the right, but the duty, of that court to take and exercise jurisdiction (*Cohens v. Virginia*, 6 Wheat. [19 U. S.] 264, 404, 5 L. Ed. 257; *Hyde v. Stone*, 20 How. [61 U. S.] 170, 175, 15 L. Ed. 874; *Payne v. Hook*, 7 Wall. [74 U. S.] 425, 430, 19 L. Ed. 260; *Chicago & N. W. R. Co. v. Whitton*, 13 Wall. 270, 286, 20 L. Ed. 571; *Chicot County v. Sherwood*, 148 U. S. 529, 534, 13 S. Ct. 695, 37 L. Ed. 546; *Willeox v. Consolidated Gas Co.*, 212 U. S. 19, 40, 29 S. Ct. 192, 53 L. Ed. 382; *McClelland v. Carland*, 217 U. S. 268, 281-282, 32 S. Ct. 269, 54 L. Ed. 762; *Kline v. Burke Const. Co.*, 260 U. S. 226, 234, 43 S. Ct. 79, 67 L. Ed. 226; *Smith v. Apple*, 264 U. S. 274, 280, 44 S. Ct. 311, 68 L. Ed. 678; 25 *Corpus Juris*, p. 693, § 9). The substance of these rulings is tersely stated in *Hyde v. Stone*, *supra*, wherein it was said (20 How. [61 U. S.], l. c. 175):

“* * * the courts of the United States are bound to proceed to judgment and to afford redress to suitors before them, in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction.”

The petitioner railway asserts that the foregoing rule, that where a federal court has by law jurisdiction it must take and exercise that jurisdiction when properly appealed for that purpose, has its exceptions, lying within the doctrine of *forum non conveniens*, and cites in support of its assertion *Canada Malting Co. v. Paterson Steamships Ltd.*, 285 U. S. 413, 52 S. Ct. 413, 76 L. Ed. 837, which was an admiralty proceeding wholly between foreigners; *Penn General Casualty Co. v. Pennsylvania*, 294 U. S. 189, 55 S. Ct. 386, 79 L. Ed. 850, which petitioner describes as involving “an actual race between the federal district court in Pennsylvania and the court of that state and possession of the property and business of a Pennsylvania insurance company” (Petitioner’s Brief, p. 36), and, dependent upon

the outcome of that "race," also involved the question of whether the company would be liquidated in the federal court under general principles of equity or in the state court by a state officer and under the state law regarding liquidation of insurance companies of that state; *Pennsylvania v. Williams*, 294 U. S. 176, 55 S. Ct. 380, 79 L. Ed. 841, which involved substantially the same situation as did *Penn General Casualty Co. v. Pennsylvania*, *supra*, although it involved a Pennsylvania building and loan company rather than an insurance company; and *Harkin v. Brundage*, 276 U. S. 36, 48 S. Ct. 268, 72 L. Ed. 457, which involved a situation aptly described by petitioner railway as "a fraud upon both (the state and the federal) courts" (Petitioner's Brief, p. 37). While we recognize that there are rare exceptions to the rule, certainly this respondent's action against petitioner railway under the Federal Employers' Liability Act does not come within the category of any of the cases relied upon by petitioner so as to be brought within an exception to the rule; her action was not one in admiralty, and was not one between "foreigners," but was, on the contrary, an action in a court of the United States, under a statute of the United States, and between citizens of the United States; her action did not involve any "race between a state and a federal court," because it was filed in the federal court on August 31, 1939 (R. 2, 4-5), some nine months before the railway filed its proceeding in the Tennessee state court (R. 17, 35, 43), and did not involve any question of whether federal law or state law should govern, because it was founded entirely in a federal statute; and, of a certainty, this respondent's action in the federal district court below did not involve any fraud upon any court.

Furthermore, the doctrine of *forum non conveniens* cannot be applied to this respondent's action under the federal act against petitioner railway in the federal district

court below, so as to authorize the Tennessee state court to interfere with the maintenance and prosecution of it, for at least three reasons. In the first place, the doctrine of *forum non conveniens* is one which is applicable only by a court to a case pending before it, as the decisions relied upon by petitioner railway well illustrate, and is not one which may be applied by one court to a case pending before a court in another jurisdiction—and petitioner railway made no attempt to have the federal district court below apply that doctrine to this respondent's case (R. 6-7, 10-11, 59, 61, 79, 80), but, on the contrary, sought a "back-handed" application of the doctrine by the state court of Tennessee. In the second place, the doctrine of *forum non conveniens* is not to be applied merely upon considerations of convenience or expense, but is to be applied only where the trial of the cause in the forum in which it is pending will produce an injustice, and we do not believe that petitioner railway company will have the temerity to contend that it cannot secure justice in and from the federal district court below. In the third place, the doctrine of *forum non conveniens* is never to be applied where it will result in an injustice to the plaintiff (*Norton v. Norton* [1908], 1 Ch. 471, 485; *Egbert v. Short* [1907], 2 Ch. 205, 212), and there seems ample reason to assume that there is some good reason from the standpoint of petitioner railway, which will result in a profit to it and in a corresponding loss to this petitioner and the dependents of her decedent, for its strenuous effort to prevent the trial of respondent's action under the act in the district court in Missouri, and, instead, to have the trial of that action held in the limited areas of Tennessee or North Carolina prescribed by the Tennessee state court's injunction.

Let us, however, now return, from our digression to discuss the contentions urged by petitioner railway, and, simply,

point out that there is presented by the case at bar no reason for a departure from the well-settled principle that when a federal court is properly appealed to in a case over which it has by law jurisdiction, it is both the right and the duty of that court to take and exercise that jurisdiction and proceed to judgment.

Under the foregoing principles, when this respondent appealed to the federal district court below to take and exercise the jurisdiction which that court indisputably had over her action for the injury to and death of her decedent, it was the duty of that court to take and exercise that jurisdiction. Furthermore, when the jurisdiction of the district court below had attached to respondent's cause of action, neither her right to prosecute her action to a final conclusion in that court, nor the right and duty of that court to exercise its jurisdiction to that end, could be interfered with, impaired, frustrated or defeated by any proceedings in any other court (*Wallace v. McConnell*, 13 Pet. [38 U. S.] 138, 151, 10 L. Ed. 95; *Peck v. Jenness*, 7 How. [48 U. S.] 612, 624, 12 L. Ed. 841; *Orton v. Smith*, 18 How. [59 U. S.] 263, 266, 15 L. Ed. 393; *Taylor v. Tainter*, 16 Wall. [83 U. S.] 336, 370, 21 L. Ed. 287; *French v. Hay*, 22 Wall. [89 U. S.] 250, 253, 22 L. Ed. 857; *In re Chetwood*, 165 U. S. 443, 460, 17 S. Ct. 385, 41 L. Ed. 782; *Proutt v. Starr*, 188 U. S. 537, 544-545, 23 S. Ct. 398, 47 L. Ed. 584; *Riehle v. Margolies*, 279 U. S. 218, 223, 49 S. Ct. 310, 73 L. Ed. 669; *Sharon v. Terry*, 36 F. 337, 355; *Chicago, M. & St. P. R. Co. v. Schendel*, 8 Cir., 292 F. 326, 333). This doctrine does not, as petitioner railway here contends, have its foundation in mere "comity"; it has its foundation in necessity, as is manifest from pronouncements of this Court, which we will now quote.

In *Freeman v. Howe*, 24 How. [65 U. S.] 450, 459, 16 L. Ed. 749, it was said:

“We need scarcely remark, that no Government could maintain the administration or execution of its laws, civil or criminal, if the jurisdiction of its judicial tribunals were subject to the determination of another. But we shall not pursue this branch of the case further.”

In *Wallace v. McConnell*, 13 Pet. [38 U. S.] 138, 151, 10 L. Ed. 95, it was said:

“The jurisdiction of the District Court of the United States, and the right of the plaintiff to prosecute his suit in that Court, having attached, that right could not be arrested or taken away by any proceedings in another Court. This would produce a collision in the jurisdiction of Courts that would extremely embarrass the administration of justice.”

In *Peck v. Jenness*, 7 How. [48 U. S.] 612, 624-625, 12 L. Ed. 841, it was said:

*“ * * * where the jurisdiction of a court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right cannot be arrested or taken away by proceedings in another court. These rules have their foundation, not merely in comity, but in necessity. * * *. ”* (Emphasis supplied.)

And the matter was clearly summed up in *Sharon v. Terry*, 36 F. 337, 355, wherein it was said:

“The jurisdiction of the Federal Court having attached, the right of the plaintiff to prosecute his suit to a final determination there cannot be arrested, defeated or impaired by any proceeding in a court of another jurisdiction. This doctrine we hold to be uncontroversial. It is essential to an orderly and decent administration of justice and to prevent an unseemly conflict of authority which could ultimately be determined only by superiority of physical force on one side or the other.”

(B) Coexistent with the principles just above discussed is the incontrovertible doctrine that "a state cannot confer jurisdiction on a federal court, nor can it take it away" (Chicago, M. & St. P. R. Co. v. Schendel, 8 Cir., 292 F. 326, 330). Literally, volumes could be written in discussing the multitude of authorities which demonstrate the existence of, and the reasons underlying the necessity for, this doctrine. Certainly, no extended discussion of those matters is necessary here, and we shall limit ourselves to brief quotation from a few of the authorities.

In *David Lupton's Sons v. Automobile Club of America*, 225 U. S. 489, 500, 32 S. Ct. 711, 56 L. Ed. 1177, it was said:

"* * * The State could not prescribe the qualifications of suitors in the courts of the United States, and could not deprive of their privileges those who were entitled under the Constitution and laws of the United States to resort to the Federal courts * * *."

In *Herron v. Southern Pacific Co.*, 283 U. S. 91, 94, 51 S. Ct. 383, 75 L. Ed. 857, this Court said:

"The controlling principle * * * is that state laws cannot alter the essential character or function of a Federal court. * * * A Federal court is not subject to state regulations."

In *Penn General Casualty Co. v. Pennsylvania*, 294 U. S. 189, 197, 55 S. Ct. 386, 79 L. Ed. 850, this Court said:

"The jurisdiction conferred on the District Courts by the Constitution and laws of the United States cannot be affected by state legislation."

In *Woods Bros. Const. Co. v. Yankton County*, 8 Cir., 54 F. 2d 304, 308, it was aptly said:

"* * * the jurisdiction of the federal court is prescribed by the Constitution and acts of Congress and cannot be restricted or enlarged by the statutes of a state or decisions of a state court."

Other authorities in this connection are *Barrow Steamship Co. v. Kane*, 170 U. S. 100, 111, 18 S. Ct. 526, 42 L. Ed. 964; *Terral v. Burke Construction Co.*, 257 U. S. 532, 42 S. Ct. 188, 66 L. Ed. 352; *Sutherland v. United States*, 8 Cir., 74 F. 2d 89, 91; and 25 *Corpus Juris*, pp. 691-692, § 6. Those authorities are further demonstrative of the fact that neither the jurisdiction of a federal court, nor the right of a party litigant to resort to the federal courts as the forum for the trial of his case, where that right exists, can be interfered with, modified, impaired, frustrated or defeated by any state action, whether executive, legislative or judicial.

(C) It follows as a necessary conclusion from the principles which we have heretofore been discussing, that the courts of a state simply have no authority or jurisdiction to restrain or enjoin proceedings in the federal courts, and any state court injunction issued for that purpose is wholly unauthorized and void (*Duncan v. Darst*, 1 How. [42 U. S.] 301, 306, 11 L. Ed. 139; *Riggs v. Johnson County*, 6 Wall. [73 U. S.] 166, 195-196, 18 L. Ed. 768; *U. S. ex rel. Moses v. Keokuk*, 6 Wall. [73 U. S.] 514, 570, 18 L. Ed. 933; *U. S. ex rel. Thomas v. Keokuk*, 6 Wall. [73 U. S.] 518, 520, 18 L. Ed. 918; *The Supervisors of Washington County v. Durant*, 9 Wall. [76 U. S.] 415, 418, 19 L. Ed. 732; *Amy v. The Supervisors*, 11 Wall. [78 U. S.] 136, 137-138, 20 L. Ed. 101; *Moran v. Sturges*, 154 U. S. 256, 267, 14 S. Ct. 1019, 38 L. Ed. 981; *Central National Bank v. Stevens*, 169 U. S. 432, 460-461, 18 S. Ct. 403, 42 L. Ed. 807; *Story's Commentaries on the Constitution of the United States*, 5th Ed., Vol. 2, §§1757-1758, pp. 537-539; *Story's Equity Jurisprudence*, 14th Ed., Vol. 2, §1225, pp. 580-582). We see no need to quote from all those decisions and authorities. The rule announced by them is tersely stated in 14 R. C. L., p. 419, §122, in the following language:

“It is a general rule that *a state court has no power to enjoin parties to an action in a federal court from further prosecuting that action* where it appears that the federal court first acquired jurisdiction of the cause” (emphasis supplied),

and this Court made a statement, from which it has never departed, and which has repeatedly been quoted, when, in *Riggs v. Johnson County*, 6 Wall. [73 U. S.] 166, 195-196, 18 L. Ed. 768, it said:

“State courts are exempt from all interference by the Federal tribunals, *but they are destitute of all power to restrain either the process or proceedings in the national courts.* Circuit courts and State Courts act separately and independently of each other, and in their respective spheres of action, the process issued by the one is as far beyond the reach of the other, as if the line of division between them was ‘traced by landmarks and monuments visible to the eye’
* * *

“Viewed in any light, therefore, it is obvious that *the injunction of a State Court is inoperative to control or in any manner to affect the process or proceedings of a Circuit Court*, not on account of any paramount jurisdiction in the latter courts, but because, in their sphere of action, Circuit Courts are wholly independent of the State tribunals. * * * Undoubtedly (Federal) Circuit courts and State courts, in certain controversies between citizens of different States, are courts of concurrent and coordinate jurisdiction, and the general rule is that, as between courts of concurrent jurisdiction, the court that first obtains possession of the controversy, or of the property in dispute, must be allowed to dispose of it without interference or interruption from the coordinate court.” (Parenthetical portion and emphasis supplied.)

Although there is considerable conflict in the authorities—which conflict we need not here consider at length—we

fully recognize that some authorities, including the decision of this Court in *Cole v. Cunningham*, 133 U. S. 107, 10 S. Ct. 269, 33 L. Ed. 538, have announced the doctrine, strongly relied upon by the petitioner railway here, that a court of equity, in a proper case and to prevent harassing, vexatious and inequitable circumstances, may restrain and enjoin parties within its jurisdiction from instituting or prosecuting proceedings in the courts of other jurisdictions. That doctrine, however, has no application to the case at bar for various reasons.

In the first place, there exists to that doctrine the exception, based upon necessity and just previously discussed, that the various state courts of this country cannot enjoin parties from proceeding in the federal courts of this country. The existence of this exception was clearly recognized by this Court in *Moran v. Sturges*, 154 U. S. 256, 14 S. Ct. 1019, 38 L. Ed. 981, where, after saying:

“The general rule is that state courts cannot enjoin proceedings in the courts of the United States
• • •” (154 U. S., l. c. 267),

this Court went on to say (154 U. S., l. c. 268):

“Mr. Justice Story was of the opinion that to the doctrine which permits the courts of one State in proper cases to enjoin persons within their jurisdiction from instituting legal proceedings in other States, or from further proceeding in actions already begun, there exists the exception that the state courts cannot enjoin parties from proceeding in the courts of the United States, nor the latter enjoin them from proceeding in the former courts, an exception based upon peculiar grounds of municipal and constitutional law. Story Eq., §900; Story Const., §1757.”

And, in *Central National Bank v. Stevens*, 169 U. S. 432, 18 S. Ct. 403, 42 L. Ed. 403, this Court, at pages 459 and 460 of 169 U. S., discussed at some length the well-estab-

lished proposition that a state court injunction is inoperative to control or in any manner affect proceedings in a federal court, and then went on to recognize that this was a necessary exception to the doctrine relied upon by petitioner railway here, saying (169 U. S., l. c. 460-461):

“The exemption of the authority of the courts of the United States from interference by legislative or judicial action of the States is essential to their independence and efficiency. *Freeman v. Howe*, 24 How. 450; *Buck v. Colbath*, 3 Wall. 334; *Rio Grande Railroad v. Gomila*, 132 U. S. 478.

“In *Story's Equity Jurisprudence*, Vol. 2, §900, it is said, referring to the power sometimes exercised by courts of equity to restrain parties within their jurisdiction from proceeding in foreign courts: ‘There is one exception to this doctrine which has been long recognized in America, and that is, that state courts cannot enjoin proceedings in the courts of the United States; nor the latter in the former courts.’ ”

It is interesting to note that the subject matter of *Story's Equity Jurisprudence*, referred to in the two quotations last made, is carried forward in the latest edition of that work (Cf. *Story's Equity Jurisprudence*, 14th Ed., Vol. 2, § 1225, pp. 580-582), and it is there noted that the trend of judicial decision is to repudiate, even as between the courts of the different states, the doctrine sometimes applied in some of the states that a state court has the power to enjoin and restrain a citizen of that state from maintaining an action in the courts of another state—probably because of more recent and better recognition of the existence of the rule that, where the jurisdiction of a court has attached, the right of the plaintiff to prosecute his action to a final conclusion therein, without interference by proceedings in any other court, cannot be entrenched upon.

The existence of this exception to the doctrine relied upon by petitioner railway makes it unnecessary for us to

discuss at length any of the authorities relied upon by petitioner, with the exception of the decision in *Bryant v. Atlantic Coast Line R. Co.*, 2 Cir., 92 F. 2d 569, which we shall hereinafter discuss at some length, because all of the other authorities relied upon by petitioner in connection with that doctrine deal with the right and power of one state to control by injunction actions brought by a citizen of that state in the courts of another state, rather than in the federal courts. It is, however, of significance to note that the decisions in *Louisville & N. R. Co. v. Ragan*, 172 Tenn. 593, 113 S. W. 2d 743, and *In re Spoo's Estate*, 191 Iowa 1134, 183 N. W. 580, so strongly relied upon by petitioner railway, are later in effect overruled by *Illinois Central R. Co. v. Miles* (Tenn.), 130 S. W. 2d 111, and *Payne v. Knapp*, 197 Iowa 737, 198 N. W. 62, respectively.

The second reason for the nonapplicability to the case at bar of the doctrine relied upon by petitioner railway here is that that doctrine, as was clearly recognized by the decision of this Court in *Cole v. Cunningham*, supra, 133 U. S., l. c. 118-119, originated, and is intended to be applied only, in cases where both parties to the proceedings in the foreign court were residents within the jurisdiction of the court of equity wherein relief was sought from the prosecution of the proceeding in the foreign court. That is not the situation presented in the case at bar, because the petitioner railway here was, and is, a resident of the State of Virginia (R. 16, 26, 42), and not a resident of the State of Tennessee.

(D) What we have heretofore said under this point of this brief, with respect to the complete lack of power or authority in the Chancery Court of Tennessee to restrain or enjoin this respondent from further maintaining and prosecuting her action against petitioner railway in the federal district court below in Missouri, has been based

entirely upon well-established general principles aside from any consideration of the effect of any specific provisions of the Federal Employers' Liability Act. When the provisions of that Act are also considered, there is left no doubt whatsoever about the complete lack of any such power or authority in the Tennessee court.

The Federal Employers' Liability Act was enacted by the Congress pursuant to the power vested in the Congress by Article I, Section 8, Clause 3 of the Constitution, empowering the Congress to regulate interstate commerce, and is a valid regulation of the rights and liabilities respecting employers' liability for injury to or death of employees of common carriers by railroad while engaged in interstate commerce (*Second Employers' Liability Cases* [*Mondou v. New York, N. H. & H. R. Co.*], 223 U. S. 1, 32 S. Ct. 169, 56 L. Ed. 327). Under the provisions of Article VI, Clause 2 of the Constitution, this act is "the supreme Law of the Land" respecting such rights and liabilities, binding upon "the judges in every State," and superseding "any Thing in the Constitution or Laws of any State to the Contrary." The effect of the enactment of this act was, in *Second Employers' Liability Cases*, *supra*, said by this Court to be:

"* * * now that the Congress has acted, the laws of the States, in so far as they cover the same field, are superseded, for necessarily that which is not supreme must yield to that which is" (223 U. S., l. c. 55).

The doctrine of the superiority of the act over the laws of the states is fully applicable both to the statutory laws of the state (*Spokane & I. E. R. Co. v. Campbell*, 241 U. S. 497, 509, 36 S. Ct. 683, 60 L. Ed. 1125; *New York Central R. Co. v. Winfield*, 244 U. S. 147, 37 S. Ct. 546, 61 L. Ed. 1045; *Erie R. Co. v. Winfield*, 244 U. S. 170, 174, 37 S. Ct. 556, 61 L. Ed. 1057) and to the common law of the states as announced by their judicial decisions (*Pryor v. Wil-*

liams, 254 U. S. 43, 45-46, 41 S. Ct. 36, 65 L. Ed. 120; New York C. & H. R. R. Co. v. Tonsellito, 244 U. S. 360, 361-362, 37 S. Ct. 620, 61 L. Ed. 1194; Wabash R. Co. v. Hayes, 234 U. S. 86, 89, 34 S. Ct. 729, 58 L. Ed. 1226; Seaboard Air Line R. Co. v. Horton, 233 U. S. 492, 501, 34 S. Ct. 635, 58 L. Ed. 1062), it being said in the case last cited:

“ * * * it is settled that since Congress, by the act of 1908, took possession of the field of the employers' liability to employees in interstate transportation by rail, all state laws upon the subject are superseded.”

It follows that all rights and liabilities respecting employers' liability for injury to or death of employees in interstate transportation by rail are regulated, both inclusively and exclusively, by the Federal Employers' Liability Act (New York Central R. Co. v. Winfield, *supra*), and that the entire subject included in the act is taken beyond the range of state laws, and the states cannot interfere with the operation of the act (Chicago, M. & St. P. R. Co. v. Schendel, 8 Cir., 292 F. 326, 331).

Now, let us again advert to the fact that, by section 6 of the act (Act of April 22, 1908, v. 149, § 6, 35 Stat. 66, as amended by act of April 5, 1910, c. 143, § 1, 36 Stat. 291, 45 U. S. C. A., § 56) the respondent in the case at bar was given the right to bring her action “ * * * in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business * * *”. In undertaking to enjoin this respondent from further maintaining or prosecuting her action against petitioner railway under the act in the federal district court below in Missouri (in which district petitioner railway was doing business [R. 16, 26, 42]), or from instituting or prosecuting a similar action in any other place except the City of Knoxville, Tennessee (in which plaintiff resided, but in which the record fails to show that petitioner rail-

way here was doing business), or the district which included Madison County, North Carolina (in which respondent's cause of action arose), the Tennessee state court's injunction was, in effect, legislation which not only repealed one of the provisions of section 6 of the Federal Employers' Liability Act, and modified and limited another of those provisions, but, also, actually injected into that section of the act a provision which does not appear therein. The injunction issued by the Tennessee Chancery Court undertook (1) to deprive respondent entirely of her right to bring her action in the federal court at the place first provided for by the act, viz., in the district of the residence of petitioner railway at Richmond, Virginia; (2) to impair and limit the right of respondent to bring her action in a federal court in the places last provided for by the act, viz., the various federal districts in which the petitioner railway was doing business, and (3) to direct respondent to bring her action in the federal court at a place not provided for by the act, viz., the district of plaintiff's residence, where the railway might not be doing business. These things, we submit, the Tennessee state court was wholly without power or authority to do because "a state court cannot confer jurisdiction on a federal court, nor can it take it away" (Chicago, M. & St. P. R. Co. v. Schendel, 8 Cir., 292 F. 326, 330), and because, if the Tennessee court can do those things and thereby abrogate and destroy that provision of the Federal Employers' Liability Act which fixes the venue and jurisdiction of federal district courts over actions brought under the act, the courts of any state can abrogate and destroy not only other provisions of that act, but of any federal statute fixing the venue and jurisdiction of any of the federal courts. To be more specific about it: if the Tennessee court can do what it did, the state courts of North Carolina, in a similar action, with equal plausibility could say that the action

could not be brought at Knoxville, Tennessee, away from the place where the cause of action arose, because some of the witnesses were residents of North Carolina; and, if the incidental burden imposed on interstate commerce be the sole test, what would prevent the Tennessee state court from prohibiting the cause of action being tried in Madison County, North Carolina, where the cause of action arose, upon the ground that a majority of the witnesses lived in Knoxville? As this Court so aptly said in *Amy v. The Supervisors*, 11 Wall. (78 U. S.) 136, 138, 20 L. Ed. 101:

“ * * * If the ground assumed by the State court in this case can be maintained, the Constitution of the United States, and the laws, made in pursuance thereof, as regards their judicial administration, instead of being the supreme law of the land, would be subordinated to the authority of the courts of every State in the Union.”

(E) The bald facts are that the right existed on the part of the respondent in the case at bar to bring her action for injury to and death of her decedent, under the Federal Employers' Liability Act, in the federal district court in any district where the petitioner railway company was doing business, and the petitioner railway was doing business in the Eastern Judicial District of Missouri (R. 16, 26, 42), where and when this respondent brought her action in the federal district court below. This right of this respondent is, we repeat, an absolute federal right (Second Employers' Liability Cases [*Mondon v. New York, N. H. & H. R. Co.*], 223 U. S. 1, 57-58, 32 S. Ct. 169, 56 L. Ed. 327; *State of Missouri ex rel. St. Louis, B. & M. R. Co. v. Taylor*, 266 U. S. 200, 208, 45 S. Ct. 47, 69 L. Ed. 247; *Hoffman v. State of Missouri ex rel. Foraker*, 274 U. S. 21, 23, 47 S. Ct. 485, 71 L. Ed. 905; *McKnett v. St. Louis-S. F. R. Co.*, 292 U. S. 230, 233-234, 54 S. Ct. 690,

78 L. Ed. 1227). That right, and the right and duty of the federal courts to exercise their jurisdiction in the enforcement of it, cannot be denied by implied qualifications, which do not appear in the clear and unequivocal terms of the federal act granting the right and fixing the jurisdiction of the courts for its enforcement, making such right and jurisdiction dependent upon and subject to such matters as inconvenience, expense, or burdensomeness, because the Congress, having the constitutional right to regulate and control the subject matter of the act, may place the burdens incidental to such regulation and control as it deemed fitting and proper (*Second Employers' Liability Cases* [*Mondou v. New York, N. H. & H. R. Co.*], 223 U. S. 1, 58, 32 S. Ct. 169, 56 L. Ed. 327; *Hoffman v. State of Missouri ex rel. Foraker*, 274 U. S. 21, 23, 47 S. Ct. 485, 71 L. Ed. 905; *Chicago, M. & St. P. R. Co. v. Schendel*, 8 Cir., 292 F. 326, 334; *Schendel v. McGee*, 8 Cir., 300 F. 273, 278; *Norris v. Illinois Central R. Co.* [D. C. Minn.], 18 F. 2d 584; *Connelley v. Central R. Co.* [D. C. N. Y.], 238 F. 932; *Trapp v. Baltimore & O. R. Co.* [D. C. Ohio], 283 F. 655; *Southern R. Co. v. Cochran*, 6 Cir., 56 F. 2d 1019, 1020; *Chesapeake & O. R. Co. v. Vigor*, 6 Cir., 90 F. 2d 7, 8, certiorari denied 302 U. S. 705, 58 S. Ct. 25, 82 L. Ed. 545; *Rader v. Baltimore & O. R. Co.*, 7 Cir., 108 F. 2d 980, 985-986, certiorari denied 309 U. S. 682, 60 S. Ct. 722, 84 L. Ed. 1026).

Let us briefly examine the language of the courts in a few of these decisions. In *Second Employers' Liability Cases*, *supra*, 223 U. S., l. c. 58, Mr. Justice Van Devanter said:

"The existence of the jurisdiction creates an implication of duty to exercise it, and that its exercise may be onerous does not militate against that implication."

In *Hoffman v. State ex rel. Foraker*, *supra*, 274 U. S.,

l. c. 23, Mr. Justice Brandeis, in speaking of the liability of a railroad company to submit to suit under the Federal Employers' Liability Act in any of the jurisdictions specified in section 6 of the act, said:

"It must submit, if there is jurisdiction, to the requirements of orderly, effective administration of justice, although thereby interstate commerce is incidentally burdened. Compare *Kane v. New Jersey*, 242 U. S. 160, 167; *St. Louis, Brownsville & Mexico Ry. v. Taylor*, 266 U. S. 200."

In *Chicago, M. & St. P. R. Co. v. Schendel*, 8 Cir., 292 F. 326, 334, it was said:

"Appellant (railroad) also claims the right to an injunction in the state court existed on account of injustice, hardship, oppression, and fraud in bringing the action in another state. * * * The mere hardship of defending a suit brought elsewhere than in the district where plaintiff or witnesses reside is hardly sufficient to warrant the interference of equity. If so, jurisdiction given by Congress could be limited in practically every case." (Parenthetical portion supplied.)

In *Rader v. Baltimore & O. R. Co.*, 7 Cir., 108 F. 2d 980, 985-986, certiorari denied 309 U. S. 682, 60 S. Ct. 722, 84 L. Ed. 1026, in holding a state court injunction to be wholly without force to restrain an action under the Federal Employers' Liability Act in a federal court, Circuit Judge Major said:

"In *Southern R. Co. v. Cochran*, 6 Cir., 56 F. (2d) 1019, 1020, the court considered a similar question, and said: * * * Jurisdiction is here asserted by a court of the United States under the mandate of a federal statute. It must be borne in mind that Congress has the power to regulate interstate commerce. The states have no such power. If the effect of a federal statute conferring jurisdiction upon a federal court is to place a burden upon interstate commerce,

the power for that purpose exists, and the remedy is legislative and not judicial. * * *

“In *McConnell v. Thomson*, 213 Ind. 16, 8 N. E. (2d) 986, 11 N. E. (2d) 185, 113 A. L. R. 1429, the court considered the instant question, with an exhaustive review of the authorities, and reached the conclusion that a state court was without power to enjoin such action under circumstances similar to those here presented. The Court, 213 Ind. 16, 8 N. E. (2d), at page 991, 11 N. E. (2d) 183, 113 A. L. R. 1429, said: “ * * * Consequently when a state court, as in the instant case, attempts to enjoin a litigant from prosecuting his cause of action, arising under the Federal Employers’ Liability Act, in a District Court of the district in which the defendant is doing business, such action, if effective, destroys a federal right of the litigant and obstructs the performance of a duty imposed by act of Congress upon a District Court of the United States. This is beyond the power of a state court.”

“Other authorities are to the same effect.”

In *Chesapeake & O. R. Co. v. Vigor*, 6 Cir., 90 F. 2d 7, certiorari denied 302 U. S. 705, 58 S. Ct. 25, 82 L. Ed. 545, in refusing an injunction to restrain the prosecution of an action, brought under Section 6 of the Federal Employers’ Liability Act in an Indiana state court having appropriate jurisdiction, Circuit Judge Moorman said (90 F. 2d, l. e. 8):

“The plaintiff (railroad company), it is true, may suffer some inconvenience or be put to extra expense in producing witnesses to testify in court in the Indiana case, but it is to be presumed that Congress considered such probable inconvenience and expense in placing the action in any district in which the defendant should be doing business at the time. * * * The defense of the case could not, of course, place any unreasonable burden on interstate commerce, for, as is pointed out in the case just cited, Congress has the power to regulate interstate commerce and may, when

it sees fit, place incidental burdens thereon by jurisdictional statutes." (Parenthetical portion supplied.)

In *Southern R. Co. v. Cochran*, 6 Cir., 56 F. 2d 1019, in refusing an application to enjoin and restrain the prosecution of an action, brought under Section 6 of the Federal Employers' Liability Act in a federal District Court in Kentucky, Circuit Judge Simmons relied principally upon the authority of the decision in *Schendel v. McGee*, 8 Cir., 300 F. 273, and said (l. c. 1020):

"Jurisdiction is here asserted by a court of the United States under the mandate of a federal statute. It must be borne in mind that Congress has the power to regulate interstate commerce. The states have no such power. If the effect of a federal statute conferring jurisdiction is to place a burden upon interstate commerce, the power for that purpose exists, and the remedy is legislative and not judicial. The precise question here presented was considered by the Circuit Court of Appeals for the Eighth Circuit in *Schendel v. McGee*, District Judge, 300 F. 273, 278. It was there said: 'We assume Congress could provide that actions in the federal courts should be brought at places where the same would not constitute a burden on interstate commerce, but Congress has not done so. It has been given the right under the Federal Employers' Liability Act, hereinbefore discussed, to an injured party, or in case of his death to the duly constituted representative, to maintain an action in the Courts of the district where the defendant is doing business at the time the suit is commenced. We are not concerned with the justice or the wisdom of such legislation. It being the law, it is a court's duty, where there is jurisdiction, to take and retain that jurisdiction and try the case.' "

The other authorities cited in this connection are to this same general effect, and it would serve no useful purpose to quote further from them. Suffice it here to say that they also rule that matters of convenience, expense or

burdensomeness to the defendant, and any matter of an incidental burden on interstate commerce, are no ground for either limiting or depriving a plaintiff of his right to select the place in which he will bring an action under the Federal Employers' Liability Act, or for affecting the right and duty of any court, whose ordinary jurisdiction is appropriate, to take and exercise jurisdiction over a case under that act.

The petitioner railway here cites, in support of its contention that interstate commerce is improperly and unreasonably burdened by the maintenance of an action at a place distant from that in which the cause of action arose, the decisions in *Davis v. Farmers Cooperative Equity Co.*, 262 U. S. 312, 43 S. Ct. 556, 67 L. Ed. 996; *Atchison, T. & S. F. R. Co. v. Wells*, 265 U. S. 101, 44 S. Ct. 469, 68 L. Ed. 928; *Eastman Kodak Co. v. Southern Photo Materials Co.*, 273 U. S. 359, 47 S. Ct. 400, 71 L. Ed. 684; *Michigan Central R. Co. v. Mix*, 278 U. S. 492, 49 S. Ct. 207, 73 L. Ed. 470; and *Denver & R. G. W. R. Co., et al. v. Terte*, 284 U. S. 284, 52 S. Ct. 152, 76 L. Ed. 295. The decisions in the cases of *Davis v. Farmers Cooperative Equity Co.*, *supra*; *Atchison, T. & S. F. R. Co. v. Wells*, *supra*, and *Michigan Central R. Co. v. Mix*, *supra*, were all founded upon the decisive fact that the respective railroads in those cases were not operating any railroad so as to be "doing business" in the jurisdictions in which suit was brought against them—a fact which clearly distinguishes them from the case at bar because the petitioner railway company here was operating a railroad and "doing business" in the judicial district which encompassed the territorial jurisdiction of the federal district court below in Missouri (R. 16, 26, 42)—but in the *Mix* case (at page 495 of 278 U. S.) this Court clearly recognized the correctness of the decision in *Hoffman v. State of Missouri ex rel. Foraker*, 274 U. S. 21, 47 S. Ct. 485, 71 L. Ed. 905, wherein it was held that, where the railroad was "doing business"

within the territorial jurisdiction of the court in which suit was brought against it under the Federal Employers' Liability Act, and said:

“It must submit, if there is jurisdiction, to the requirements of orderly, effective administration of justice, although thereby interstate commerce is incidentally burdened” (274 U. S., l. c. 23).

The decisions in *Eastman Kodak Co. v. Southern Photo Company*, *supra*, and *Denver & R. G. W. R. Co. et al. v. Terte*, *supra*, so strongly relied upon by petitioner railway, are actually authorities against the railway's position here. In *Eastman Kodak Co. v. Southern Photo Co.*, *supra*, this Court held proper (at pages 370-374 of 273 U. S.) the venue of the federal district court in Georgia in an action against a New York corporation which had no office, place of business, or agent in Georgia, but which carried on an interstate business there, under certain federal statutes providing that suit might be brought in the district wherein the defendant “may be found or transacts business.” In *Denver & R. G. W. R. Co. et al. v. Terte*, *supra*, the necessary distinction here made is clearly emphasized. There suit was brought in a Missouri state court at Kansas City, upon a cause of action under the Federal Employers' Liability Act which arose at Pueblo, Colorado—some 625 miles away—against two railroads, one of which (the *Denver & R. G. W. R. Co.*) was not “doing business” in Missouri, and the other of which (the *Atchison, T. & S. F. R. Co.*) was “doing business” in that state and at Kansas City; and this Court there held (at pages 286-287 of 284 U. S.), upon the authority of *Hoffman v. State of Missouri ex rel. Foraker*, 274 U. S. 21, 42 S. Ct. 485, 71 L. Ed. 905, that the action could be maintained against the *Atchison, T. & S. F. R. Co.*, which was “doing business” in Missouri, and also held that the action could not be maintained against the

Denver & R. G. W. R. Co., which was not doing business in Missouri, because to do so would be the unauthorized "imposition of a serious burden on interstate commerce" contrary to the doctrine of *Davis v. Farmer's Cooperative Equity Co.*, supra; *Atchison, T. & S. F. R. Co. v. Wells*, supra, and *Michigan Central R. Co. v. Mix*, supra. Manifestly, in determining whether any given court has jurisdiction of an action brought under a federal statute authorizing suits against a defendant wherever the defendant is "doing business," the controlling factor is whether or not the defendant is, in point of fact, actually "doing business" within the territorial jurisdiction of that court, and not whether the institution and prosecution of such suit in that court would incidentally burden interstate commerce.

Does not the fact that, having full knowledge of the decisions now under discussion, the Congress, during the years which have intervened since those decisions, has not undertaken to modify section 6 of the act so as to remove the burden placed upon interstate commerce by the provisions of that section which provide for suit wherever the railroad may be "doing business," compel the thought that the Congress considers that burden a necessary one which has been placed appropriately upon the railroads?

(F) The Federal Employers' Liability Act is, by reason of its being the supreme law of the land, just as much the law of Tennessee, and just as much indicative of the public policy of Tennessee, as if incorporated in the constitution and statutes of that state.

We will not take much of this Court's time with discussion of this statement of the law, which is most obvious in the light of Article VI, clause 2, of the Constitution of the United States which provides, in effect, that the Constitution and laws of the United States shall be "the supreme law of the land," binding upon "the judges in every

state," notwithstanding "anything in the constitution or laws of any state to the contrary."*

In this connection, in *Second Employers' Liability Cases* (*Mondou v. New York, N. H. & H. R. Co.*), 223 U. S. 1, 57-58, 32 S. Ct. 169, 56 L. Ed. 327, it was said, with reference to the Federal Employers' Liability Act, that:

"The suggestion that the act of Congress is not in harmony with the policy of the State * * * is quite inadmissible, because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the States, and thereby established a policy for all. That policy is as much the policy of Connecticut as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State. As was said by this Court in *Claffin v. Houseman*, 93 U. S. 130, 136, 137:

"The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. The United States is not a foreign sovereignty as regards the several States, but is a concurrent, and, within its jurisdiction, paramount sovereignty * * *. The two together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent * * *."

These matters are of importance here, because they serve completely to refute petitioner railway's contentions that

*How the Chancellor of the Tennessee Chancery Court could, in the light of this provision of the Federal Constitution, and in the light of Section 6 of the Federal Employers' Liability Act, be acting in the performance of his sworn duty to uphold the Constitution and laws of the United States, when he ordered issued the injunction against plaintiff here, we are unable to comprehend. (Compare *Robb v. Connolly*, 111 U. S. 624, 637, 4 S. Ct. 544, 28 L. Ed. 542.)

the Tennessee Chancery Court had jurisdiction to restrain this respondent because she was not merely a resident, but an "officer"—i. e., an administratrix appointed by and accountable to the courts of Tennessee—of that state, and because the proceeds of any recovery in her action for the death of her decedent constituted assets of his estate (Petitioner's Brief, pp. 17-20). The Federal Employers' Liability Act having given the personal representative of the deceased the right to bring the action in the federal district courts at any place where the railway was "doing business," and that act being just as much a part of the state law as if specifically written into the constitution and statutes of all the states, it cannot be said that the law of Tennessee, or the policy of that state, prevented the exercise of that right by the personal representative, or permitted the Tennessee state courts to prevent the exercise of that right upon the grounds of "equity."

We fully recognize the general rule that, ordinarily, an administrator or executor cannot sue or be sued in his official capacity in the courts of a jurisdiction foreign to that from which he derives his authority, but that general rule is without application to an administrator or executor who brings an action under the Federal Employers' Liability Act, and, therefore, without application here. If the laws of the state jurisdiction from which an administrator or executor derives his authority, and the laws of another state jurisdiction, authorize him to bring and maintain an action in the courts of the latter, what is there to prevent his bringing and maintaining such a suit? This last is the situation here presented because the Federal Employers' Liability Act, which is the law of all state and federal jurisdictions in the United States—including the State of Tennessee—gave this respondent the right to bring and maintain her action against petitioner under that act in the federal district court below in Missouri.

(G) Furthermore, the real fact of the matter is that respondent did not bring her action in the federal district court below in Missouri by virtue of her inherent right as the representative of the estate of her decedent, but by virtue of designation by the federal statute as trustee for designated dependent survivors of the decedent and for them alone (*Chicago, B. & Q. R. Co. v. Wells-Dickey Trust Co.*, 275 U. S. 161, 163, 48 S. Ct. 73, 72 L. Ed. 216; *Lindgren v. United States*, 281 U. S. 38, 41, 50 S. Ct. 207, 74 L. Ed. 686; *Reading Co. v. Koons*, 271 U. S. 58, 62, 46 S. Ct. 405, 70 L. Ed. 835; *Gulf, C. & S. F. R. Co. v. McGinnis*, 228 U. S. 173, 175-176, 33 S. Ct. 426, 57 L. Ed. 785; *Southern R. Co. v. Stewart*, 8 Cir., 115 F. 2d 317, 321). Any recovery by her in such action does not become a part of the assets of the deceased's estate, is not subject to his debts, and is not to be distributed under any statutes of descents and distributions (authorities just above cited; *Taylor v. Taylor*, 232 U. S. 363, 34 S. Ct. 350, 58 L. Ed. 638). By reason of these facts it has been clearly and unequivocally held that an administrator or executor may bring and maintain an action under the Federal Employers' Liability Act in any of the courts given jurisdiction over such actions by section 6 of the act, even though such courts be outside the jurisdiction from which he derived his appointment as such administrator or executor (*Gulf, M. & N. R. Co. v. Wood*, 164 Miss. 765, 776-778, 146 So. 298, certiorari denied 289 U. S. 759, 53 S. Ct. 791, 77 L. Ed. 1502; *Wells v. Davis*, 303 Mo. 388, 397-405, 261 S. W. 58, 59-62. Compare, also, *Dennick v. Central R. Co. of N. J.*, 103 U. S. 11, 26 L. Ed. 439).

III.

The injunction issued by the Chancery Court of Knox County, Tennessee, being void by reason of having been issued by a court which had no jurisdiction of the subject matter, is not entitled to be given "full faith and credit" so as to be binding upon either this Court or the Courts below.

The petitioner railway contends that this Court, and the district court below, were required, by the "full faith and credit" clause of Article IV, Section 1, of the Constitution of the United States, to give binding effect to the injunction issued by the Chancery Court of Knox County, Tennessee. Short shrift can be made of this contention.

In the first place, the contention made is predicated upon the assumptions that the Tennessee Court had jurisdiction, and that, therefore, the correctness of its decision is of no concern. We have, however, just heretofore shown that the Tennessee court had no jurisdiction of the subject matter of the bill filed in it by the petitioner railway.

In the second place, the "full faith and credit" clause does not require the federal courts, nor the courts of other states, to blindly give full faith and credit to, or to be conclusively bound by, the judgment of a state court which is void for want of jurisdiction. So, in *Cole v. Cunningham*, 133 U. S. 107, 112, 10 S. Ct. 269, 33 L. Ed. 538, this Court said:

"This ('full faith and credit' clause) does not prevent an inquiry into the jurisdiction of the court, in which a judgment is rendered, to pronounce the judgment, nor the right of the State to exercise authority over the parties or the subject matter, nor whether the judgment is founded in, and impeachable for, a manifest fraud." (Parenthetical portion and emphasis supplied.)

In *Board of Public Works v. Columoia College*, 17 Wall. (84 U. S.) 521, 528, 21 L. Ed. 687, it was said:

“The clause of the Federal Constitution which requires full faith and credit to be given in each State to the records and judicial proceedings of every other State, *applies to the records and proceedings of courts only so far as they have jurisdiction*. Wherever they want jurisdiction the records are not entitled to credit.” (Emphasis supplied.)

In *Huntington v. Attrill*, 146 U. S. 657, 685, 13 S. Ct. 224, 36 L. Ed. 1123, it was said:

“These provisions of the Constitution and laws of the United States are necessarily to be read in the light of some established principles, which they were not intended to overthrow. They give no effect to judgments of a court which had no jurisdiction of the subject matter or of the parties.”

In *Bigelow v. Old Dominion Copper Mining & Smelting Co.*, 225 U. S. 111, 134, 32 S. Ct. 641, 56 L. Ed. 1009, it was said:

“It is therefore well settled that the courts of one State are not required to regard as conclusive any judgment of the court of another State which had no jurisdiction of the subject or of the parties,”

and there further said (225 U. S., l. c. 135):

“The general effect of a judgment of a court of one State when relied upon as an estoppel in the courts of another State is that which it has, by law or usage, in the courts of the State from which it comes. But the faith and credit to be accorded does not preclude an inquiry into the jurisdiction of the court which pronounced the judgment or its right to bind the persons against whom the judgment is sought to be enforced.”

In the light of these principles, and in the light of the fact that the State of Tennessee—whether acting through

its Chancery Court of Knox County, or otherwise—had no right to exercise any authority with respect to the subject matter of the bill of complaint filed in said Chancery Court by the petitioner railway, it is manifest that any contention respecting the “full faith and credit” clause of the Constitution is wholly without merit. In *Chicago, M. & St. P. R. Co. v. Schendel*, 8 Cir., 292 F. 326, 334, the Court disposed of a similar contention by tersely saying:

“It is apparent from what we have said that the point made by counsel for appellant that the ruling of the trial court denied full faith and credit to the public acts and jurisdictional proceedings to the State of Iowa, contrary to Article 4, Section 1, of the Constitution of the United States, is not, in our opinion, sound, as the order of the Iowa court, in so far as it affects the proceedings in the federal court of the United States for the district of Minnesota, is void.”

IV.

The district court below had reason and occasion and power and authority to issue the injunction which it issued against petitioner railway.

Prefatory to extended discussion of the proposition just above announced, the respondent here desires to call attention to an incidental matter regarding it. The petitioner railway, in order to sustain its position here, has been compelled to take the highly specious and anomalous position of contending that the injunction issued against it by the federal district court below interfered with, and stayed the proceedings in, the Tennessee Chancery Court (Petitioner's Brief, p. 33), and at the same time contending that the injunction issued against this respondent by the Tennessee Chancery Court did not have the same effect upon the federal district court below, but was solely a personal restraint upon this respondent (Petitioner's Brief, pp. 43-44). Certainly, that position cannot be sustained, because this

Court, in the light of the manifest fact that the proceedings of a court are as much interfered with when one of the parties to a proceeding in the court is enjoined as if the court itself were enjoined, has long held that an injunction against a party is in legal effect an injunction against the court (*Peck v. Jenness*, 7 How. 48 U. S. 612, 625, 12 L. Ed. 841; *Hill v. Martin*, 296 U. S. 393, 403, 56 S. Ct. 278, 80 L. Ed. 293; *Oklahoma Packing Co. v. Oklahoma Gas & E. Co.*, 309 U. S. 4, 9, 60 S. Ct. 215, 84 L. Ed. 537).

(A) The injunction issued by the Tennessee Chancery Court interfered with, impaired and tended to frustrate and defeat the jurisdiction of the federal district court below.

The nature and effect of the injunction issued by the Tennessee Chancery Court against respondent here (R. 34-35) is best demonstrated by its language which provided, in so far as is here material, that this respondent, individually and in her capacity as administratrix of the estate of her decedent, was "strictly commanded and enjoined, under the penalty of a contempt of Court" to "absolutely desist and refrain from prosecuting and maintaining" her action against petitioner railway here "now pending * * * in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri at the City of St. Louis." Now, in view of the facts that respondent was a necessary party to her action in the federal district court below, under the provisions of sections 1 and 9 of the Federal Employers' Liability Act (45 U. S. C. A., §§ 51, 59), which required the action for the injury to and death of Geoffrey Painter to be brought in the name of his "personal representative,"* and that the respondent here, in both her capacity as "personal representative" of the deceased and individually, is a proper,

*There is no pretense that there is any "personal representative" of the deceased other than the respondent here.

necessary and material witness for the trial of her action (R. 16, 43), it is manifest that the injunction issued by the Tennessee Chancery Court, which attempts to restrain plaintiff absolutely from prosecuting and maintaining her action in the federal district court below—and thereby attempts to restrain her from testifying in that action either at the trial or by deposition—not only specifically undertook to “stay the proceedings” in the federal district court below, but attempted to otherwise seriously arrest, interfere with, impair, frustrate and defeat the jurisdiction of that court. In *Chicago, M. & St. P. R. Co. v. Schendel*, 8 Cir., 292 F. 326, the court had before it a situation where the plaintiff in a case pending in a federal court was not enjoined, but where material witnesses had been enjoined by a state court from testifying in the plaintiff’s action, and the Eighth Circuit Court of Appeals there said:

“ * * * a federal court cannot proceed within its jurisdiction, if witnesses can be prevented by a state court from testifying therein” (l. c. 333).

“The state court had no right to interfere by preventing witnesses giving testimony and thus practically destroying the power of the federal court to act” (l. c. 334).

(B and C) The federal district court below had plenary power to issue its injunction to preserve and protect its jurisdiction of and over respondent’s action under the Federal Employers’ Liability Act.

Before going further, let respondent here be thoroughly understood as fully recognizing the general rule that where the state and federal courts have concurrent jurisdiction over the subject matter of a cause of action in personam, separate actions may be maintained on that cause of action concurrently, *pari passu*, in both a state and a federal court, because the jurisdiction of the ~~two~~ courts is entirely

independent of each other and without a common superior, and neither of such courts can enjoin or prevent the prosecution of the action in the other (*Kline v. Burke Construction Co.*, 260 U. S. 226, 43 S. Ct. 79, 67 L. Ed. 226). This principle would have precluded any attempt by the federal district court below from enjoining the prosecution in the courts of Tennessee, or of any other state, of an action by respondent founded in her cause of action against petitioner railway for the injury to and death of her decedent (*Chesapeake & O. R. Co. v. Vigor*, 6 Cir., 90 F. 2d 7, certiorari denied 302 U. S. 705, 58 S. Ct. 25, 82 L. Ed. 545, discussed ante, pp. 41-42), and it is that principle which likewise precludes the state courts of Tennessee from enjoining or preventing the prosecution of the respondent's action under the Federal Employers' Liability Act in the federal district court below in Missouri.

The principle just above adverted to, however, has no application to the relief sought by respondent by her supplemental complaint in the federal district court below, nor to the injunction issued by the federal district court below upon that supplemental complaint, because that relief was not sought, and that injunction was not issued, to enjoin, restrain or stay proceedings in the Tennessee courts of an action involving the subject matter of the respondent's action in the federal district court below, but the relief sought, and granted by the federal district court below, was to require the petitioner railway, over whom the district court below had jurisdiction in an action pending before it, to do and refrain from doing certain things, so as to preserve and protect the proper jurisdiction of the district court below over the subject matter of, and the parties to, the action properly pending before it. The distinction which we make is quite apparent if it be borne in mind that the subject matter of respondent's action in the federal district court below is the adjudication of her

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right of recovery of, and petitioner railway's liability for, damages for the injury to and death of her decedent. The federal district court below, and that court alone, has jurisdiction of that action and the subject matter of it,* and the Tennessee Chancery Court has never had jurisdiction of that action or its subject matter. The Tennessee court, simply, never at any time had before it the question of respondent's right to recover, and petitioner railway's liability for, damages for the injury to and death of respondent's decedent; the subject matter of the proceeding brought by the railway in that court was the right of injunction to restrain and enjoin a resident of Tennessee from further maintaining and prosecuting an action in a federal court.

The distinction which we here make in this connection is not only a clear and common-sense proposition, but it has been specifically passed upon in *Chicago, M. & St. P. R. Co. v. Schendel*, 8 Cir., 292 F. 326. There the injunction suit was brought in the state court, to prevent the witnesses from testifying, before the action under the Federal Employers' Liability Act was brought in the federal court, but the Court, in upholding the right, duty and power of the federal court to protect its jurisdiction by enjoining the injunction proceeding in the state court, said (l. c. 333-334):

"The suit in the state court to enjoin witnesses from testifying in the case . . . was commenced prior to the suit in the United States District Court in Minnesota. *The subject matter of the suit in the state court was not the cause of action for the death of Baker* (plaintiff's intestate). *The subject matter of the action in the federal court was damages arising from said death. No state court had acquired juris-*

*No other action has ever been brought in any court to adjudicate the respondent's right of recovery of, and petitioner railway's liability for, damages for the injury to and death of respondent's decedent (R. 17, 44-45).

diction of this cause of action. The jurisdiction was in the federal court, and the fact that an injunction suit was brought in the state court prior to commencing the action in the federal court could not give any jurisdiction of a matter not embraced therein. If, when an action is about to be brought in a proper jurisdiction in a federal court, the defendant can secure a sweeping injunction against witnesses appearing and testifying in that court in any action not yet brought, or giving testimony by deposition, it would be a perversion of the law to say that thereby the state court had acquired jurisdiction, and the federal court could not complain or interfere. The jurisdiction of the federal court would be impaired or defeated by such a proceeding, the same as if the proceeding had been brought subsequent to the one in the federal court. The state court had acquired no jurisdiction of the subject matter. The federal court, having acquired such jurisdiction, had the right to retain and protect it from interference until the determination of the cause. The state court had no right to interfere by preventing witnesses giving testimony and thus practically destroying the power of the federal court to act. If the federal courts under such circumstances cannot protect their jurisdiction, they become impotent as instrumentalities of justice.

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“As we hold the federal court had jurisdiction of the subject matter of this action, and as the order of the state court interfered with and impaired the same, it (the Federal District Court) had the right to issue the order in question, and to direct appellant to dismiss its action in the state court.” (Parenthetical portions and emphasis supplied.)

Now, the petitioner railway here recognizes “the rule of protection of first acquired jurisdiction” (Petitioner’s Brief, p. 33) which creates in a court the right, duty, power and authority to protect its jurisdiction by injunction against interference, impairment, arrest or defeat, by

enjoining proceedings which might tend to so affect that jurisdiction—and the existence of that rule will be clearly demonstrated by the authorities from which presently we shall quote. Petitioner railway, however, contends that section 265 of the Judicial Code (28 USCA, § 379, and formerly § 720, Revised Statutes) limits that power or authority in the federal courts, where the effect of a federal court injunction is to stay proceedings, with but few exceptions in actions *in rem* or quasi *in rem* which do not include a situation where the federal court has first acquired jurisdiction of an action at law *in personam*. At the expense of brevity, we will quote from a few of the many pertinent authorities in order to demonstrate conclusively that a federal court has plenary power and authority to enjoin and require a party to a cause before it, and over whom that court has jurisdiction in that case, to take or refrain from taking action to prevent interference with, or impairment, arrest, frustration or defeat of, that court's jurisdiction over that cause, irrespective of the nature and character of the particular cause, and irrespective of section 265 of the Judicial Code.

In 32 Corpus Juris, pp. 87-88, Sec. 77, it is said:

“Where a court whose power is adequate to the administration of complete justice in the premises has acquired jurisdiction of a case, the litigation should be confined to that forum, and any attempt by either party to divert the litigation to another court will be restrained by injunction. * * * The observance of this rule is essential to the due and orderly administration of justice and the integrity of judgments and decrees. * * *

In *Continental Illinois Nat. Bank & Trust Co. v. Chicago, R. I. & P. R. Co.*, 294 U. S. 648, 675-676, 55 S. Ct. 595, 79 L. Ed. 1110, it was said:

“The power to issue an injunction when necessary to prevent the defeat or impairment of its jurisdic-

tion is, therefore, inherent in a court, * * *. Section 262 of the Judicial Code, which authorizes the United States courts 'to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions,' recognizes and declares the principle. An example of its application is found in *Kline v. Burke Constr. Co.*, 260 U. S. 226, 229, 67 L. Ed. 226, 229, 43 S. Ct. 79, 24 A. L. R. 1077, where we held that a Federal court, having first acquired jurisdiction of the subject matter, could enjoin the parties from proceeding in a state court of concurrent jurisdiction 'where the effect of the action would be to defeat or impair the jurisdiction of the Federal court.' An injunction may be issued in such circumstances for the purpose of protecting and preserving the jurisdiction of the court 'until the object of the suit is accomplished and complete justice done between the parties.' *Looney v. Eastern Texas R. Co.*, 247 U. S. 214, 221, 62 L. Ed. 1084, 1087, 38 S. Ct. 460."

So, in *Kline v. Burke Construction Company*, 260 U. S. 226, 228-229, 43 S. Ct. 79, 67 L. Ed. 226, it was said:

"Section 265 of the Judicial Code provides: 'The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.' But this section is to be construed in connection with § 262, which authorizes the United States courts 'to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law.' See *Julian v. Central Trust Co.*, 193 U. S. 93, 112; *Lanning v. Osborne*, 79 Fed. 657, 662. It is settled that where a federal court has first acquired jurisdiction of the subject matter of a cause, it may enjoin the parties from proceeding in a state court of concurrent juris-

diction where the effect of the action would be to defeat or impair the jurisdiction of the federal court.”

In *Wells Fargo & Co. v. Taylor*, 254 U. S. 175, 41 S. Ct. 93, 65 L. Ed. 205, this Court, speaking of Section 265 of the Judicial Code, and its limitation upon the power of federal courts, said (254 U. S., l. c. 183):

“The provision has been in force more than a century and often has been considered by this court. As the decisions show, it is intended to give effect to a familiar rule of comity and like that rule is limited in its field of operation. Within that field it tends to prevent unseemly interference with the orderly disposal of litigation in the state courts and is salutary; but to carry it beyond that field would materially hamper the federal courts in the discharge of duties otherwise plainly cast upon them by the Constitution and the laws of Congress, which of course is not contemplated. As with many other statutory provisions, this one is designed to be in accord with, and not antagonistic to, our dual system of courts. In recognition of this it has come to be settled by repeated decisions and in actual practice that, where the elements of federal and equity jurisdiction are present, the provision does not * * * prevent them from maintaining and protecting their own jurisdiction, properly acquired and still subsisting, by enjoining attempts to frustrate, defeat or impair it through proceedings in the state courts. *French v. Hay*, 22 Wall. 250; *Julian v. Central Trust Co.*, 193 U. S. 93, 112; *Chesapeake & Ohio Ry. Co. v. McCabe*, 213 U. S. 207, 219; *Looney v. Eastern Texas R. R. Co.*, 247 U. S. 214, 221.”

And in *Looney v. Eastern Texas R. Co.*, 247 U. S. 214, 221, 38 S. Ct. 460, 62 L. Ed. 1084, it was said:

“The use of the writ of injunction, by federal courts first acquiring jurisdiction over the parties or the subject matter of a suit, for the purpose of protecting

and preserving that jurisdiction until the object of the suit is accomplished and complete justice done between the parties, is familiar and long established practice. *Freeman v. Howe*, 24 How. 450; *Harkrader v. Wadley*, 172 U. S. 148, 163, 164; in a rate case, *Missouri v. Chicago, Burlington & Quincy R. R. Co.*, 241 U. S. 533, 543. So important is it that unseemly conflict of authority between state and federal courts should be avoided by maintaining the jurisdiction of each free from the encroachments of the other, that § 265 of the Judicial Code, Rev. Stats., § 720, Act of March 2, 1793, c. 22, 1 Stat. 334, has repeatedly been held not applicable to such an injunction. *Julian v. Central Trust Co.*, 193 U. S. 93, 113; *Simon v. Southern Ry. Co.*, 236 U. S. 115."

In *Hull v. Burr*, 234 U. S. 712, 723, 34 S. Ct. 892, 58 L. Ed. 1557, it was said:

"It is recognized, however, that § 720 (Section 265 of the Judicial Code) was not intended to limit the power of the Federal courts to enforce their authority in cases that on other grounds are within their proper jurisdiction; and, hence, it has been held, in aid of its jurisdiction properly acquired, that in order to render its judgments and decrees effectual, a Federal court may restrain proceedings in a state court which would have the effect of defeating or impairing such jurisdiction. *French, Trustee, v. Hay*, 22 Wall. 250; *Dietzsch v. Huidekoper*, 103 U. S. 494, 497; *Julian v. Central Trust Co.*, 193 U. S. 93, 112; *Traction Co. v. Mining Co.*, 196 U. S. 239, 245." (Parenthetical portion supplied.)

In *Julian v. Central Trust Company*, 193 U. S. 93, 24 S. Ct. 399, 48 L. Ed. 629, it was said (193 U. S., l. c. 112):

"In such cases where the Federal court acts in aid of its own jurisdiction and to render its decree effectual, it may, notwithstanding sec. 720, Rev. Stat. (Section 265 of the Judicial Code), restrain all proceedings in a state court which would have the effect of

defeating or impairing its jurisdiction. *Sharon v. Terry*, 36 Fed. Rep. 337, per Mr. Justice Field; *French v. Hay*, 22 Wall. 250; *Deitzsch v. Huidekoper*, 103 U. S. 494." (Parenthetical portion supplied.)

And the foregoing quotation was quoted and adopted in *Riverdale Cotton Mills v. Alabama & Georgia Mfg. Co.*, 198 U. S. 188, 196, 25 S. Ct. 429, 49 L. Ed. 1008.

In discussing the power of the federal courts to enjoin proceedings in a state court, notwithstanding Judicial Code, § 265, in order to fully exercise and protect its jurisdiction, it is said, in *High on Injunctions*, 4th Ed., § 110, p. 126:

"In such a case—the (Federal) court having jurisdiction in personam over the parties, and having control over the cause—it will not permit its jurisdiction to be trenched upon by any other tribunal, and may properly enjoin a party to the proceeding from proceeding beyond the jurisdiction of the court."

In 14 Am. Jur., pp. 454-456, § 260, in discussing the effect of Judicial Code, § 265, upon the power of the federal courts to restrain proceedings in a state court, it is said:

"This provision, however, has been regarded as limited in its application to those cases where proceedings have been begun in a state court before the commencement of proceedings in a Federal tribunal; otherwise, after suit brought in a Federal court, a party defendant could, by resorting to a suit in a state court, defeat, in many ways, the effective jurisdiction and action of the Federal Court, after it had obtained full jurisdiction of person and subject matter. It is to be construed in connection with the provisions of the Revised Statutes that the Federal courts shall have power to issue all writs which may be necessary for the exercise of their respective jurisdictions and agreeable to the usages and principles of law."

Relying upon the general rule that, where state and fed-

eral courts have concurrent jurisdiction of the subject matter of a cause of action, separate actions may be maintained concurrently upon such cause of action *pari passu* in both a state and a federal court because of the independence and lack of a common superior of the two courts, petitioner railway seeks to avoid the effect of the foregoing authorities by contending (a) that the district court below was without power or authority to enjoin or affect the jurisdiction of the Tennessee state court, for that would be an improper interference with the jurisdiction of that state court, and (b) that the exceptions to Section 265 of the Judicial Code are limited to cases removed from the state to the federal courts, or to actions in *rem* and quasi in *rem*. Let us briefly consider these contentions in this order.

How can there be sustained the paradoxical position that the injunction of the district court below is improper because it interferes with the jurisdiction of the Tennessee state court, when the proceeding in that state court, which was instituted long after the action in the district court, indisputably interferes with, impairs, arrests, frustrates and defeats the jurisdiction of the district court over the action previously brought and pending in it? How can the petitioner railway sustain its position that the Tennessee state court has a right to be free from interference with its jurisdiction, superior to the right of the district court below to be free from like interference? Is not the federal district court below entitled to the same freedom from interference with its jurisdiction as is the Tennessee court? The answers to these questions are obvious, and, notwithstanding the absence of a statutory prohibition and limitation upon state courts such as is put upon the federal courts by Section 265 of the Judicial Code, such a prohibition and limitation upon the power and authority of the state courts exists, and will be enforced, the same

as if there were a controlling statute. This is demonstrated not only by what has heretofore been said under point II of this brief, but by the decision in *Essanay Film Co. v. Kane*, 258 U. S. 358, 361, 42 S. Ct. 318, 66 L. Ed. 658, where, in discussing Section 265 of the Judicial Code, it was said:

“Since 1793, the prohibition of the use of injunction from a federal court to stay proceedings in a state court has been maintained continuously, and has been consistently upheld. *Hull v. Burr*, 234 U. S. 712, 723, and cases cited. In exceptional instances, the letter has been departed from while the spirit of the prohibition has been observed; for example, in cases holding that, in order to maintain the jurisdiction of a federal court properly invoked, and render its judgments and decrees effectual, proceedings in a state court which would defeat or impair such jurisdiction may be enjoined. *French v. Hay*, 22 Wall. 250; *Dietzsch v. Huidekoper*, 103 U. S. 494, 497; *Julian v. Central Trust Co.*, 193 U. S. 93, 112; *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 U. S. 239, 245; *Looney v. Eastern Texas R. R. Co.*, 247 U. S. 214, 221. *The effect of this, as will be observed, is but to enforce the same freedom from interference, on the one hand, that it is the prime object of § 265 to require on the other.*” (Emphasis supplied.)

The contention that the power and authority of a federal court to restrain proceedings in a state court which interferes with the jurisdiction of the former is limited by Section 265 of the Judicial Code to cases in the federal court which are removed thereto from a state court, or are actions in rem or quasi in rem, seeks to read into the authorities hereinbefore mentioned a limitation which does not appear therein, and which is opposed to logic and common sense; and it overlooks the foundation and basis for the doctrine that, where a federal court has first acquired jurisdiction of the subject matter of a cause of

action, it may enjoin the parties from proceeding in a state court where the effect of such a proceeding would be to defeat or impair the jurisdiction of the federal court. This doctrine is a rule of necessity, to preserve the independence of the federal courts, and is founded in the fact that the proceeding in the state court interferes with the jurisdiction of the federal court. The fact that the action in the federal court is a case removed from a state court, or an action in rem or quasi in rem, which is interfered with by state court proceedings, is merely demonstrative of the necessity for the federal court to enjoin the state court proceeding, but it is certainly no limitation upon the right and power of the federal court to enjoin. If a proceeding instituted in a state court has the effect of interfering with, arresting, impairing, frustrating and defeating the jurisdiction of a federal court over an action of which the federal court had first acquired jurisdiction, what possible difference can it make, with respect to the necessity and right of the federal court to restrain and enjoin such interference with its jurisdiction, that the action in the federal court is not one removed from a state court, or is not one in rem or quasi in rem? Is the power, authority and jurisdiction of the federal court to be destroyed by the proceeding in the state court merely because the action pending in the federal court does not happen to be within one of these particular classes? Is the federal court to be rendered powerless to perform its functions and duties cast upon it by the laws of the United States, and thereby impotent as an instrumentality of justice, merely because the action before it does not happen to come within one of those classes? Is the plaintiff in the federal court to be deprived of the rights granted him by the federal law—the “supreme law of the land”—to institute and prosecute his action in the federal courts, merely because his action does not come within one of the speci-

fied classes? Is the federal court to be deprived of that independence of action which is the very foundation for the principle that, where the state and federal court have concurrent jurisdiction over the subject matter of a cause of action, each may proceed without interference from the other, merely because⁶ the action in the federal court does not happen to be within one of these three classes? The obvious, and exclusive, answer to these questions is the negative, and further argument of this matter is certainly superfluous in the light of the decision in *Chicago, M. & St. P. R. Co. v. Schendel*, 8 Cir., 292 F. 326, 334, wherein, upon like authority, it was said:

“As we hold the federal court had jurisdiction of the subject matter of this action, and as the order of the state court interfered with and impaired the same, it (the federal court below) had the right to issue the (injunctive) order in question, and direct the appellant to dismiss its action in the state court.” (Parenthetical portions supplied.)

Petitioner railway suggests (Petitioner's brief, pp. 38-40), upon the authority of *Railroad Commission of Texas v. The Pullman Company*, 312 U. S. 496, 61 S. Ct. 643, 85 L. Ed. (Adv. Op.) 580, that, for the purpose of the public interest, the rightful independence and harmonious relationship of the state and federal governments, and the smooth working of the federal judiciary, the federal district court below should have exercised its wide equitable discretion and abstained from issuing its injunction against the petitioner which stayed the proceedings in the Tennessee Chancery Court. We submit that, if anyone should have exercised abstention for those purposes, it was the petitioner railway and the Tennessee state court. When they disrupted the rightful independence and harmonious relationship of the state and federal judicial systems, and created needless friction between the federal district court

below and the Tennessee Chancery Court, by the injunction issued by the Tennessee state court at petitioner railway's instance, was the federal district court below compelled to sit idly by and be rendered completely impotent as an instrumentality of justice by the conduct of a litigant before it? Or could the federal district court below exercise its plain duty to protect its jurisdiction to hear to judgment the respondent's action under the Federal Employers' Liability Act, over which it had full, complete, sole and exclusive jurisdiction?

The correct doctrine appears to have been most aptly stated by the Circuit Court of Appeals for the Eighth Circuit when, in its decision below of the case at bar, it said:

"The compelling ground of decision * * * [is] the necessity that federal courts be free to decide cases within their jurisdiction without interference by state courts. The state and federal system of concurrent jurisdiction compels that courts of concurrent jurisdiction be left free to decide such in personam actions for money judgment as may be before them. * * * We think that the nature of the dual system compels the conclusion that a state court which assumes to enjoin such an action in a federal court does so in excess of its jurisdiction and renders a decree which is void in so far as it affects proceedings in a federal court. Such a void decree is not entitled to full faith and credit and its enforcement may be enjoined" (117 F. 2d, l. e. 106; R. 90).

Bryant v. Atlantic Coast Line R. Co. Discussed.

Petitioner railway here relies strongly upon the decision of the Circuit Court of Appeals for the Second Circuit in *Bryant v. Atlantic Coast Line R. Co.*, 2 Cir., 92 F. 659, and contends that that decision is better reasoned than the decisions of the Circuit Court of Appeals for the Eighth Circuit in this case below (117 F. 2d 100) and in *Chicago*,

M. & St. P. R. Co. v. Schendel, 8 Cir., 292 F. 326, upon the assertion that the latter two cases erroneously misinterpreted the decision in *Kline v. Burke Construction Co.*, 260 U. S. 226, 43 S. Ct. 79, 67 L. Ed. 226, which clearly and unequivocally ruled that a federal court could not enjoin the prosecution in a state court of an action in personam for a money judgment upon the ground that a like action was pending in the federal court between the same parties.

We respectfully submit, however, that the decision in *Bryant v. Atlantic Coast Line R. Co.*, supra, is clearly shown by its own language to be highly erroneous and inconsistent with the decision in *Kline v. Burke Construction Co.*, supra, and that the decisions of the Eighth Circuit Court of Appeals in this case, and in *Chicago, M. & St. P. R. Co.*, supra, are correct and consistent with the *Kline* case.

The case of *Bryant v. Atlantic Coast Line R. Co.*, supra, involved a set of facts substantially identical with those in the case at bar, but there it was held that the federal district court was without authority to issue an injunction to protect its jurisdiction against interference by an injunction issued by a state court. The *Bryant* case asserts itself to be founded in the doctrine announced in *Kline v. Burke Construction Co.*, supra, for it said:

“* * * the very purpose of *Kline v. Burke Const Co.*, supra, was to reaffirm—for it was an old doctrine—that two actions in personam upon the same cause of action may go on *pari passu* in different jurisdictions” (92 F. 2d, l. c. 571),

but the decision in the *Bryant* case had the effect of being directly contradictory to the doctrine of the *Kline* case by permitting a state court injunction to arrest the prosecution of an action pending in a federal court. The *Bryant* case ignored and avoided the rule that “a state court is

destitute of all power to restrain the proceedings in a federal court," by reason of its erroneous conception that the subject matter of the cause of action involved in the employee's action under the Federal Employers' Liability Act pending in federal court was the same as the subject matter of the cause of action involved in the railway's injunction proceeding in the state court to restrain the employee from prosecuting his action in the federal court—the error of which conception is clearly shown by the discussion heretofore made under Point IV of this brief, ante, pp. 54-56, demonstrating that the subject matter of the two causes of action is entirely different. Furthermore, if the two proceedings did involve the same cause of action, how could the Second Circuit Court of Appeals hold in the Bryant case—as it did hold—that the state court injunction proceeding could have the effect of staying the prosecution of the action under the Federal Employers' Liability Act in the federal court, without doing severe violence to the very doctrine upon which the decision purports to be founded, viz.: "that two actions in personam upon the same cause of action may go on *pari passu* in different jurisdictions"? This distinction was clearly recognized by the Eighth Circuit Court of Appeals in Chicago, M. & St. P. R. Co. v. Schendel, 8 Cir., 292 F., l. e. 333-334. In the decision of the case at bar below, the Eighth Circuit Court of Appeals went to some length (117 F. 2d, l. e. 106-107; R. 90-92) to demonstrate that both its decision in the case at bar and in Chicago, M. & St. P. R. Co., supra, were in full accord with the decision of this Court in Kline v. Burke Construction Co., supra, and, with reference to the decision of the Second Circuit Court of Appeals in Bryant v. Atlantic Coast Line R. Co., supra, said:

"* * * interference by one court or the other with the trial of such actions [i. e., actions in personam

for money judgments] is the very thing which the opinion in the Kline case was intended to prevent. We think that the application of the Kline case to permit such interference would subvert its true intent and would defeat its intendment. The balance between Sections 262 and 265 of the Judicial Code lies at the point where one court interferes with the other. Neither state nor federal court has jurisdiction to enjoin the other except when one interferes with the province of the other, then the court interfered with has exclusive jurisdiction to prevent the interference" (117 F. 2d, l. c. 107; R. 91).

We most respectfully submit that the decisions of the Eighth Circuit Court of Appeals in the instant case (117 F. 2d 100; R. 78-94), and in *Chicago, M. & St. P. R. Co. v. Schendel*, 292 F. 326, are eminently correct and proper, and that the decision of the Second Circuit Court of Appeals in *Bryant v. Atlantic Coast Line R. Co.*, 92 F. 2d 569, is erroneous and should not be followed. The Bryant case is the only case that we have been able to find holding it proper for a state court to enjoin proceedings in a federal court.

V.

No state or federal court, other than the federal district court below in Missouri, is open or available to respondent for the prosecution of her cause of action for the injury to and death of her decedent.

We feel compelled to bring the above-stated situation to the attention of this Court before we conclude this argument.

The petitioner railway company has in several instances (Cf. Petitioner's Brief, pp. 17, 20) asserted that the state and federal courts in Tennessee and North Carolina are open and available to respondent for the institution and

prosecution of her action for damages for the death of her decedent under the Federal Employers' Liability Act. That assertion is, simply, utterly false and without any foundation whatsoever.

The record in this case clearly shows, and it is the fact, that no suit or action, other than respondent's action pending in the federal district court below in Missouri, has been brought in any state or federal court to adjudicate the right of the personal representative of the deceased (or of his surviving widow and dependent minor children) to recover, or to adjudicate the liability of the petitioner railway company for, damages for the injury to and death of the deceased, Geoffrey L. Painter (R. 17, 44-45). The injury to and death of said deceased indisputably occurred on February 3, 1939 (R. 3, 8, 11, 14-15, 42-43; see, also, Petitioner's Brief, p. 4), at which time section 6 of the Federal Employers' Liability Act (Act of Apr. 22, 1908, c. 149, § 6, 35 Stat. 66, as amended by Act of Apr. 5, 1910, c. 143, § 1, 36 Stat. 291; 45 U. S. C. A., § 56) provided, in so far as is here material:

“No action shall be maintained under this chapter unless commenced within two years from the day the cause of action accrued.”

This provision of the statute consistently and repeatedly has been ruled a limitation on the right of action, rather than a mere limitation on the remedy only, so that compliance with this provision is a condition to the right of action (*Atlantic Coast Line R. Co. v. Burnette*, 239 U. S. 199, 36 S. Ct. 75, 60 L. Ed. 226; *Reading Co. v. Koons*, 271 U. S. 58, 46 S. Ct. 405, 70 L. Ed. 835; *Flynn v. New York, N. H. & H. R. Co.*, 283 U. S. 53, 51 S. Ct. 357, 75 L. Ed. 837; *Wabash R. Co. v. Bridal*, 8 Cir., 94 F. 2d 117, 121, certiorari denied 305 U. S. 602, 59 S. Ct. 63, 83 L. Ed. 382; *Rademaker v. E. D. Flynn Export Co.*, 5 Cir., 17 F. 2d 15,

17). It necessarily follows that neither the respondent, nor anyone else, can now—more than two years after the cause of action accrued—institute and maintain any other action, in any other state or federal court, to recover damages under the Federal Employers' Liability Act for the injury to and death of respondent's decedent, Geoffrev L. Painter, and, this, notwithstanding the amendment of section 6 of the Federal Employers' Liability Act on August 11, 1939 (Act of Aug. 11, 1939, c. 685, § 2, 53 Stat. 1404), extending the limitation from two to three years, because that latter act is not retroactive (*Winfree v. Northern Pacific R. Co.*, 227 U. S. 296, 33 S. Ct. 273, 57 L. Ed. 518; *Morrison v. Baltimore & O. R. Co.*, 40 App. D. C. 391, Ann. Cas. 1914 C, 1026).

Not only is petitioner's assertion, to the effect that courts other than the federal district court below in Missouri are open and available to respondent for the prosecution of a cause of action under the Federal Employers' Liability Act for damages for the injury to and death of her decedent, utterly false, but to sustain the petitioner here would be to deprive respondent completely of a right of action prescribed by a federal statute, and to deprive the dependents of the deceased completely of compensation to which they are entitled under a statute of the United States for his injury and death, notwithstanding that respondent instituted an action thereon within the time specifically prescribed by the federal statute, and in a court specifically prescribed by the federal statute as being a proper court for the enforcement of the right.

The fact of the matter is that, when petitioner railway instituted the proceedings in the Tennessee Chancery Court on May 27, 1940 (R. 17, 43), this respondent's action against the railway in the federal district court below under the Federal Employers' Liability Act was set for

trial on July 8, 1940 (R. 61), and would have been tried and disposed of at that time—almost fifteen months ago—had not the proceedings in the Tennessee Chancery Court intervened and prevented such trial and disposition of respondent's case. Certainly, the equities of the matter are with respondent and not with petitioner railway.

CONCLUSION.

In conclusion, we most respectfully submit that, for the reasons and upon the authorities hereinbefore discussed, the decisions of the courts below in this case were eminently correct and proper. To hold otherwise would, ultimately, require this Honorable Court to place its approval upon the following results, viz.:

(1) That the right to maintain transitory actions wherever the defendant can be found no longer exists.

(2) That Section 6 of the Federal Employers' Liability Act, providing that actions under the act may be brought in a district in which the defendant shall be doing business, is meaningless, and is subordinate and must yield to an ex parte injunction issued by a state court, or any other state action.

(3) That any state can, by either judicial, legislative or executive action, override any law of Congress, even though concededly valid.

(4) That any state court can compel any citizen of that state to try his litigation wherever that court may determine is most convenient, irrespective of the venue statutes of that state, irrespective of any federal statute, and irrespective of the general rule as to transitory actions.

(5) That any state may deprive any citizen of that

state of a federal right, specifically given him by the federal law, because the state may deem such right contrary to its public policy.

(6) That a state court may interfere with, impair, frustrate, defeat and destroy the jurisdiction of a federal court over a controversy of which the latter first acquired complete jurisdiction, and over which it alone was exercising jurisdiction.

(7) That a state court may, by ex parte injunction, do that which the state in its sovereign capacity could not do, that is, limit and restrict the right of its citizens to resort to the federal courts in their litigation, and limit, restrict or enlarge upon the jurisdiction of the federal courts.

(8) That, under the guise of equity, a defendant railway company may interfere with, limit, restrict, impair, frustrate and defeat both the federal rights of others, and the jurisdiction of the federal courts, merely because the exercise of that right and that jurisdiction might be inconvenient, expensive or burdensome to the railway company.

(9) That a defendant railway company has, irrespective of all state and federal statutes, the absolute right to select the forum in which it may be sued by others for the enforcement of the latter's rights.

(10) That the constitutional supremacy of the laws of the United States, and the independence of the federal judicial system, are nonexistent.

Other similar paradoxical and anomalous results which would necessarily follow from a holding other than that made by the courts below in this case can readily be brought to mind. If such results can exist, then the fed-

eral law and the federal courts are useless, futile and impotent things.

We, therefore, most respectfully submit that the judgments and orders of the courts below in this case not only should, but must, be affirmed.

Respectfully submitted,

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Attorneys for Respondent.

APPENDIX.

The various pertinent provisions of the Federal Employers' Liability Act, and the Judicial Code, involved in this case, are as follows:

Federal Employers' Liability Act.

Sec. 1. Every common carrier by railroad while engaging in commerce between any of the several states * * * shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence * * * of such carrier, * * *. (Apr. 22, 1908, c. 149, § 1, 35 Stat. 65, 45 U. S. C. A. § 51.)

Sec. 6. No action shall be maintained under this chapter unless commenced within two years from the day the cause of action accrued. Under this chapter an action may be brought in a district court of the United States in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action * * *. (Apr. 22, 1908, c. 149, § 6, 35 Stat. 66, as amended Apr. 5, 1910, c. 143, § 1, 36 Stat. 291, 45 U. S. C. A., § 56.)

Sec. 9. Any right of action given by this chapter to a person suffering injury shall survive to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee, and, if none, then of such employee's parents; and, if none, then of the

next of kin dependent upon such employee, but in such cases there shall be only one recovery for the same injury. (Apr. 5, 1910, c. 143, § 2, 36 Stat. 291, 45 U. S. C. A., § 59.)

Judicial Code.

Sec. 262. The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the circuit court of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law. (Mar. 3, 1911, c. 231, § 262, 36 Stat. 1162, 28 U. S. C. A., § 377.)

Sec. 265. The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy. (Mar. 3, 1911, c. 231, § 265, 36 Stat. 1162, 28 U. S. C. A., § 379.)

SUPREME COURT OF THE UNITED STATES.

No. 24—OCTOBER TERM, 1941.

Southern Railway Company, Petitioner, vs. Ethel Painter, Administratrix of the Estate of Geoffrey L. Painter, deceased.	}	On Writ of Certiorari to United States Circuit Court of Appeals for the Eighth Circuit.
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[November 17, 1941.]

Mr. Justice FRANKFURTER delivered the opinion of the Court.

On August 31, 1939, respondent brought an action against petitioner in the federal District Court for the Eastern District of Missouri to recover damages under the Federal Employers' Liability Act, 35 Stat. 65; 45 U. S. C. § 51 *et seq.*, for the wrongful death of her husband while employed by petitioner as a fireman on an interstate train operated between points in Tennessee and North Carolina. While this action was pending, petitioner filed a bill in the Chancery Court of Knox County, Tennessee, alleging that respondent and the deceased were citizens of Tennessee; that petitioner, a Virginia corporation having its principal office in Richmond, Virginia, does no business in Missouri other than of an interstate character; that the accident occurred in Madison County, North Carolina, "just beyond the North Carolina-Tennessee line"; that the Missouri federal court is more than 500 miles distant from respondent's residence, the residence of petitioner's witnesses, and the place where the accident occurred; that petitioner could not transport its witnesses to Missouri except at "enormous expense"; that respondent's purpose in bringing suit in Missouri was to evade the law of Tennessee and North Carolina; and that petitioner maintains agents in Tennessee and North Carolina upon whom process can be served. The chancellor thereupon enjoined respondent from further prosecuting her action in the Missouri federal court and from instituting any similar suits against petitioner except in the state and federal courts in Tennessee and North Carolina. Respondent did not appeal from this decree. Instead, she filed a "supplemental bill" in the Missouri federal court to enjoin the proceedings in the Tennessee state court. Holding that the com-

mencement of respondent's action for damages gave the federal court "specific, complete, sole and exclusive jurisdiction" which could not be "intrenched upon" by proceedings in another court, the District Court, by an appropriate interlocutory decree, forbade petitioner from further prosecuting its suit in the Tennessee state court and ordered it to dismiss the state suit. This decree was affirmed by the Circuit Court of Appeals for the Eighth Circuit, 117 F. (2d) 100. We brought the case here, 313 U. S. 556, in view of the relation of its jurisdictional problems to those in No. 16, *Toucey v. New York Life Insurance Company*, 314 U. S. —, and No. 19, *Phoenix Finance Corporation v. Iowa-Wisconsin Bridge Company*, 314 U. S. —.

The limitations imposed on the power of the federal courts by § 265 of the Judicial Code, as we have applied them this day in the *Toucey* and *Phoenix* cases, Nos. 16 and 19, *supra*, govern the disposition of this case. The restrictions of § 265 upon the use of the injunction to stay a litigation in a state court confine the district courts even though such an injunction is sought in support of an earlier suit in the federal courts. Congress has endowed the federal courts with such protective jurisdiction neither generally, nor in the specific instance of claims arising under the Federal Employers' Liability Act. Ever since the Act of March 2, 1793, 1 Stat. 334, § 5. Congress has done precisely the opposite. Because of its views of appropriate policy in the interplay of state and federal judiciaries, Congress has forbidden the exclusive absorption of such litigation by the federal courts. If a state court proceeds as the Chancery Court of Tennessee acted, the ultimate vindication of any federal right lies with this Court.

The District Court was here without power to enjoin petitioner from further prosecuting its suit in the Tennessee state court.

Reversed.

The CHIEF JUSTICE, Mr. Justice ROBERTS and
Mr. Justice REED, concurring.

The reasons which led to dissent in No. 16, *Toucey v. New York Life Insurance Co.*, 314 U. S. —, and No. 19, *Phoenix Finance Corp. v. Iowa-Wisconsin Bridge Co.*, 314 U. S. —, do not exist in this case. There is no federal decree and therefore no need of an injunction to protect the decree or prevent relitigation.